96-67

CONSTITUTIONAL AMENDMENT TO BALANCE THE FEDERAL BUDGET

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S.J. Res. 126

JANUARY 14 AND FEBRUARY 22, 1980

Serial No. 96-67

NEWARK PUBLIC LIBRARY
DEC 30 1980
U. S. GOVT. PUBS.
DEPOSITORY 376

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
67-215 O WASHINGTON : 1980

Y4.J89/2:

COMMITTEE ON THE JUDICIARY

EDWARD M. KENNEDY, Massachusetts, *Chairman*

BIRCH BAYH, Indiana
ROBERT C. BYRD, West Virginia
JOSEPH R. BIDEN, Jr., Delaware
JOHN C. CULVER, Iowa
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

STROM THURMOND, South Carolina
CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
THAD COCHRAN, Mississippi
ALAN K. SIMPSON, Wyoming

STEPHEN BREYER, *Chief Counsel*
EMORY SNEEDEN, *Minority Chief Counsel*
ARTHUR BERNHARD, *Counsel*
RENN PATCH, *Counsel*

(II)

DEC 30 1980
U. S. GOVT. PUBS.
DEPOSITORY 376

CONTENTS

MONDAY, JANUARY 14, 1980

STATEMENTS

	Page
Opening statement of Senator Heflin	1
Opening statement of Senator Cochran	5

TESTIMONY

Panel of economics professors:	
Bird, Dr. Ronald E., University of Alabama; and Dr. Tyrone Black, University of Southern Mississippi	7
Panel of media officials:	
Giddens, Kenneth R., president, WKRG–TV; William J. Hearin, publisher, Mobile Press Register; and Thomas Druey, publisher, Quest Publications	18

PREPARED STATEMENT

Cochran, Senator Thad	6

FRIDAY, FEBRUARY 22, 1980

STATEMENT

Opening statement of Senator Hatch	29

TESTIMONY

Hansen, Hon. Robert B., attorney general, State of Utah	33
Panel of State representatives:	
Bangerter, Norman H., member, appropriations executive committee; Gary Brockbank, vice chairman, revenues and taxation committee; and Kevin Watt, member, social services committee	37
Panel of business community members:	
Lewis, Glenn, representing Utah Council of Small Business; Jack Olson, representing Utah Taxpayers Association; and Charles Akerlow, businessman, Salt Lake City	46
Tomlinson, David L., chairman, Utah delegation to the White House Conference on Small Business	52
Lewis, Glenn, Utah Council of Small Business	54
Panel of academicians:	
Crawford, Dr. Robert, associate professor of economics, Brigham Young University; Dr. Jefferson Fordham, professor of law, University of Utah; and Dr. Timothy Meeding, assistant professor of economics, on behalf of Jewell J. Rasmussen, University of Utah	57

PREPARED STATEMENTS

Crawford, Dr. Robert	84
Fordham, Dr. Jefferson	77
Smeeding, Dr. Timothy, and Dr. Jewell J. Rasmussen	78
Appendix	89

best copy available

CONTENTS

MONDAY, JANUARY 14, 1980

STATEMENTS

Opening statement of Senator Hollings 1
Opening statement of Senator Cochran 4

TESTIMONY

Panel of economic projections:
Boyd, Dr. Donald R., University of Alabama; and Dr. Theodore Black, University of Southern Mississippi 7

Panel of media officials:
Gardner, Kenneth R., president, WKRG-TV; William A. Pierce, publisher, Mobile Press Register; and Thomas Lowry, publisher, Guest Publications 28

PREPARED STATEMENTS

Opening statement of Senator Hatch 52

TESTIMONY

Panel of State representatives:
Hansen, Hon. Robert B., minority leader, State of Utah;
Bangerter, Governor N., member, appropriations executive committee;
Glen Jacobsen, vice chairman, revenue and taxation committee; and Lynda Ward, member, social services committee 57

Panel of business community executives:
Lewis, Glenn, representing Utah Council of Small Business; Jack Olsen, representing Utah Taxpayers Association; and Charles Adelow, president, Salt Lake City 68

Hollingshead, David L., chairman, Utah Conference on Small Business 84

Panel of academicians:
Crawford, Dr. Nelson, economic professor of economics, Brigham Young University; Dr. LeRoy Jeppsen, professor of law, University of Utah; and Dr. Timothy Dowling, assistant professor of economics, on behalf of Jewell J. Rasmussen, University of Utah 87

PREPARED STATEMENTS

Crawford, Dr. Robert 94
Goodman, Dr. Jeffrey 77
Dowling, Dr. Timothy, and Dr. Jewell J. Rasmussen 89

Appendix 101

CONSTITUTIONAL AMENDMENT TO BALANCE THE FEDERAL BUDGET

MONDAY, JANUARY 14, 1980

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Mobile, Ala.

The committee met, pursuant to notice, at 2 p.m., in room 207, U.S. Courthouse, Mobile, Ala., Senator Heflin presiding.

Senators present: Senators Heflin and Cochran.

Senator HEFLIN. I believe we will get started. Senator Cochran will be in shortly. He had a speech in Gulfport or Pascagoula, one or the other, and phoned and said he would be a little late, but I think maybe we can get started so we can finish on time. I have an opening statement which I would like to make.

OPENING STATEMENT OF SENATOR HEFLIN

When I first joined the Senate in January of last year, the first piece of legislation I sponsored was a joint resolution calling for a constitutional amendment that would mandate a balanced Federal budget on an annual basis. In offering this legislation, I was fulfilling a pledge I made to the people of Alabama who sent me to Washington to represent them. The people of Alabama, like the people all over this country, realize that inflation is the No. 1 problem facing this country today. No doub there are other problems which we must face and overcome, but as these problems wax and wane, the problem of inflation goes on and on and on. The people of this country are crying out for relief and it is the responsibility of the Congress to assume the leadership in trying to bring inflation under control and to provide the much needed relief for the average American worker and taxpayer.

In my first floor speech in the Senate, I urged the Senate and the House of Representatives to assume the leadership in this battle. I noted that a strong move was being made by the States to convene a constitutional convention in order to propose a balance-the-budget constitutional amendment. I felt then and I feel now that such a convention would be unwise and certainly would be unneeded if the Congress fulfills its own responsibilities for providing the leadership in this area.

I must admit, however, that at the start of the last session, the prospects for progress looked bleak indeed. There are many, many persons both in and out of the Congress who thought this movement

pages tightly bound

would never get off the ground. Dozens of proposals for achieving a balanced budget were put forward, and although each had its own constituency, no consensus could be seen for any particular approach to solving the problem.

Early in the year, however, Senator Cochran and I joined a coalition of Senators who were interested in providing relief from inflation to the American taxpayers, which began to meet to seek ways of attacking this problem. This coalition of Senators and their staffs met frequently throughout the spring, summer, and fall trying to arrive at a consensus measure which could be supported by all the various factions and constituencies who were seeking the same end, although by a variety of means.

By early fall, it was clear that a majority of the members of the Constitution Subcommittee were in agreement that some action should be taken this year, but again there was no consensus as to the particular approach which would be most appropriate. Several months of intensive work by my staff and staff members of Senators DeConcini, Hatch, Simpson, and Thurmond.

I would like to introduce Senator Thad Cochran of the State of Mississippi who is a member of the Judiciary Committee and who will be joining me here today.

Senator COCHRAN. Thank you.

Senator HEFLIN. I would like for you to meet these people personally, but I thought we would get started. It may well be, though, that you would like to—would the media like to have a press conference with Senator Cochran first? Some of you may have other things that you have to do, and there might be some other things. What is your pleasure on that?

MEMBER OF THE MEDIA. We will just go ahead with the meeting.

Senator HEFLIN. I was making my opening statement.

Early in the year, however, Senator Cochran and I joined a coalition of Senators who were interested in providing relief from inflation to the American taxpayers, which began to meet to seek ways of attacking this problem. This coalition of Senators and their staffs met frequently throughout the spring, summer, and fall trying to arrive at a consensus measure which could be supported by all the various factions and constituencies who were seeking the same end, although by a variety of means.

By early fall, it was clear that a majority of the members of the Constitution Subcommittee were in agreement that some action should be taken this year, but again there was no consensus as to the particular approach which would be most appropriate. Several months of intensive work by my staff and staff members of Senators DeConcini, Hatch, Simpson, and Thurmond, always in coordination with and in conjunction with the efforts of the ad hoc Balance the Budget Committee made up of Members from the Senate at large, worked diligently on trying to form some kind of coalition. Various approaches were taken, scrutinized by the subcommittee members and the ad hoc committee and revised or rejected.

Finally, just before Christmas, a measure was forged which, in my judgment, takes a fresh approach to the problem and which combines the best features of the various competing approaches

to the solution of the problem of balancing the budget and restraining Federal spending and Federal growth.

The proposed amendment has been scrutinized by several Senators and interest groups as well as the staffs of many in the Senate. Although the proposed amendment may not be perfect and may yet undergo further refinement, it appears to be a consensus of those who examined this amendment that it is an amendment that we can live with, that the American public can rally behind and that has a realistic chance of being passed by this Congress and ratified by the several States. I think that we have obtained a major breakthrough which will lead to the unsnarling of the impasse that was caused by so many competing pieces of legislation.

This amendment, Senate Joint Resolution 126, was reported favorably by the Constitution Subcommittee of the Senate Judiciary Committee on December 19, 1979. I think that is a historic day, because this is the first step in a long journey which will eventually see this amendment become a part of our organic law. This is the first time in history that such an amendment has received a favorable report and I am proud to have been a part of this undertaking.

I think at this point it is important to note the characteristics of this amendment. It is not the intention of the drafters of that amendment to write economic policy in the Constitution. In our collective judgment, it is only incidentally an economic amendment; primarily it is an amendment of process. Section 1 of the amendment establishes a norm that spending should not exceed revenues. If a government is going to spend money for whatever purpose, it should and must have the money in hand to pay for the goods or services required. This is a concept that is basic to sound fiscal policy both on an individual level and on the national level. It's a concept that all Americans understand. You cannot continue to spend more money than you take in year after year and be on sound economic footing. Section 1 can be waived by a majority vote in case of war or by a three-fifths vote of the Members of Congress in the event the country has to go to deficit spending and is not then at war.

Section 2 requires that revenues not grow at a rate which exceeds the growth of national income and thereby establishes another norm. This norm is that tax increases must be above board and affirmatively approved by a vote of the elected representatives. The amendment does not try to control the level of Government spending, per se. What it does provide is that if the Government is going to raise taxes, it must do so by majority vote in the open, and not rely on hidden taxes such as inflation to drive up Federal revenues and thus provide the financing of increased Federal spending. The Congress can no longer hide behind inflation if this amendment is approved, as I think it will be. Congress will then be put in the hard position of making decisions about whether to cut spending or to raise taxes to cover the increased spending. Either decision will be difficult, and this difficulty I think will inhibit the growth of needless Federal programs. Thus, in effect, the provision will be both a limitation on spending and a limitation on taxation, which are both major goals for any such amendment.

As mentioned, the amendment is a unique combination of the approaches which are competing for attention. First and foremost it

READEX FICHE

is a balance-the-budget amendment, but, as mentioned it also has the characteristics of a spending limitation and a tax limitation amendment. It expressly mandates a balanced budget which can be waived by Congress only by a three-fifths vote. It is a tax limitation because it prohibits hidden inflationary tax increases and it is a spending limitation in that if there is no vote to raise taxes, spending will be held down by the section mandating a balanced budget.

I stated earlier that we are participating in a historic event. I truly believe this, and I think that the American people will rally behind this amendment once the details of the amendment are made known generally. That, of course, is one reason for holding these hearings, and I'm sure other hearings will be held around the country so that the public may be informed. I hope that all groups who have an interest in bringing fiscal restraint and economic sanity to this Government will rally behind this amendment and give it their support. It is very likely that the amendment will be reported by the full Senate Judiciary Committee by the middle of March 1980. We have a firm commitment from the chairman that it will be put to a vote not later than March 15, 1980. I think the votes will be there to move the bill to the Senate floor. It is thus very likely that this amendment can be debated on the floor of the Senate during this year. In my judgment, we have achieved a breakthrough in the war on inflation and now we must move boldly to exploit our successes. I call upon Alabamians, Mississippians, and Americans all over this Nation to get involved in this movement. The time is ripe, and if we act decisively, perhaps before the end of this session of Congress, we can present the American people the opportunity to ratify this much needed and sensible amendment to our Constitution.

Today is an important day in this overall movement, since today's hearings are the first to be held which directly address the new approach taken by Senate Joint Resolution 126. Again, I am proud to be a part of this movement and I am doubly proud that Alabama and the South can lead the way in moving this amendment forward.

I would like to sort of read the portions of the amendment that are important, and then make a comment or two about them.

The first section states that Congress must first adopt a budget which sets forth the total receipts and the total expenditures of the United States for a fiscal year. It then says that no budget in which expenditures exceed receipts shall be adopted unless three-fifths of each House of the Congress approves such budget by rollcall vote directed solely to that subject. So it requires the budget process first before you get to the appropriations. It then recites that Congress shall not pass, and the President shall not sign, any appropriation bill which would cause the total expenditures for any year to exceed the expenditures in the budget for such year.

In the limitation on taxation provision, the amendment uses the term "receipts." I think receipts is a general, broad term which includes all forms of income coming into the Treasury of the United States. The amendment states that the receipts in any year shall not exceed, as a proportion of the national income, that collected in accordance with this section in the previous year unless a bill directed solely at approving a specific increase in such proportion has been passed by each House of Congress by rollcall vote and such bill has

become law. Now that, in effect, is a limitation on taxation which says, for example, that if your proportion of taxes to the national income for the previous year was 20 percent, that 20 percent proportion cannot be increased unless there is a specific bill that approves a percentage increase like to 21 percent or 22 percent, whatever it might be, but it has to be directed solely to that purpose. Then it provides that Congress may waive the provisions of section 1 with respect to any single year in which a declaration of war is in effect.

You will note that instead of using the term "gross national product" in section 2, which is the limitation on taxation, that they have used the term "national income." The term national income in the definition is a little more definite than the term gross national product as we know it today, and it was felt that that would be a better terminology.

So you have here a budget approach requirement, a provision that your expenditures can't exceed receipts, and a limitation on taxation, which is designed to take care of inflation and make you face up to the matter pertaining to hidden taxes by saying taxes, as a proportion to the national income, cannot be increased unless you have a bill that is directed solely for that purpose. By controlling taxes, the amendment hereby controls expenditures because it prevents expenditures from exceeding receipts without a three-fifths vote of Congress.

I think that is sort of a general explanation of this bill as it is at the present time.

Senator Cochran, we are delighted to have you here. Senator Cochran is well known here in Mobile. I have talked to many people here who kept up with his campaign for the Senate because of television coverage from Mississippi.

It is always a pleasure to meet with Senator Cochran. I have found him to be a hard-working, diligent, highly intelligent, and down-to-earth Senator, and I think we need a few more down-to-earth Senators in the halls of the U.S. Senate. So we welcome you to Alabama, and we would be delighted to hear any statement you would like to make.

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. Thank you, Senator Heflin. I appreciate your deciding to request the chairman to give us an opportunity to hold field hearings in Mobile on this very important subject. You have certainly played a leading role in bringing the resolution to amend the Constitution to a point where it is right on the brink of being reported out of the Senate Judiciary Committee. This is quite an accomplishment and it is a tribute to your early leadership in the Senate, and I am proud to be associated with you in that effort.

You know, you mentioned my maybe being down to earth. I think of the great opportunities we have when we can have field hearings out in the countryside and get away from Washington some is that you realize there is an awful lot of good commonsense and clear thinking out in the rural areas, small towns, and communities and cities of America. I think it helps us because, when we get out of here with all that, it's bound to rub off and we can bring the information

and opinions that we get back to Washington. They will be a permanent part of the hearings on this subject and will help the committee as it tries to wrestle with and refine the concept that we are supporting, and that is a way to develop new legal sanctions to force the Federal Government to live within its means, except in times of genuine national emergency when we might have to opt for a deficit to protect the economic interest and security of the country.

It is an honor to be here. I have a prepared statement, Mr. Chairman, which I am going to ask permission to incorporate in the record, and then would have a couple of observations to make about the specific recommendation we are making to amend this Constitution of ours.

The deficit spree that we have witnessed is not a temporary or a minor accounting problem that we have run into. It is an annually recurring threat to our economic system. Over the last 30 years, budget deficits have been incurred 25 times with a total accumulation of $450 billion, as opposed to only five surpluses during that period totaling $17 billion. The national debt ceiling now is set at $879 billion. The annual interest on that debt is $67 billion. Senator Harry Byrd made a talk on the floor of the Senate earlier this year, and I can remember his pointing out that 20 cents out of every dollar that is paid in taxes this year by the American people will be used to pay the interest on the national debt. The fiscal 1981 budget, which is being proposed by President Carter according to a statement that he issued Sunday night, will again reflect a deficit, although there will be a smaller deficit for 1981 than we had for fiscal year 1980. Nonetheless, it illustrates a continuation of the trend to have an unbalanced budget.

In dealing with figures like $879 billion or even $67 billion, fiscal tends to become metaphysical. It is hard to imagine how much money that really is. Like Senator Edward Dirksen said one time when they were debating an appropriation on the floor of the Senate, he said, "You had better watch out; now you are spending $1 billion for this amendment and $1 billion for this other one; pretty soon it is going to add up to real money." The fact is, it has added up to real money. This is something that is obvious to Senator Heflin and to me as well. I will be listed as a cosponsor of the resolution to amend the Constitution as soon as Congress reconvenes on the 22d.

Again, it is a pleasure to be here with you and help try to identify some of the ways we can make sure that this resolution does the job for which it is intended.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Cochran follows:]

PREPARED STATEMENT OF SENATOR THAD COCHRAN

Mr. Chairman, thank you for having this hearing on the important subject of a constitutional amendment to require the Government to balance the Federal budget, and I would also like to thank you for inviting me to Mobile.

This afternoon's hearing is especially important, not only because of the subject matter, but also I understand this may be one of only a very few days of hearings on this subject at the full committee level. Thus, it is an important opportunity for the public to express its views on the content of S.J. Res. 126, which was voted out of subcommittee just before the Christmas recess.

Mr. Chairman, the Federal deficit is not just a temporary and minor accounting problem. It is an annually recurring threat to our economic system. Over the last

30 years budget deficits have been incurred 23 times with a deficit of $450 billion, as opposed to only 5 surpluses totaling $17 billion. The national debt ceiling is $879 billion and the annual interest on that debt is $67 billion. The fiscal year 1981 budget to be released by the administration next week will no doubt add to those totals.

In dealing with figures like $879 billion, or even $67 billion, "fiscal" approaches "metaphysical." We've had deficits and "the debt" for so long that they have achieved a permanent status and unfortunately a high degree of acceptance as a fact of life.

The impact of the staggering national debt and the implications it has for both the economy and the liberty and livelihood of our citizens have convinced me we need a constitutional amendment to balance the budget. At the beginning of the 96th Congress, I co-sponsored S.J. Res. 4 on this subject and when the Congress reconvenes I will add my name as a co-sponsor of S.J. Res. 126, the resolution which the Judiciary Committee will be considering.

I understand that the witnesses we will hear today will discuss the public support for a balance the budget amendment, the economic considerations of limiting Government spending and the practical problems of making a balance the budget amendment work. I look forward to that testimony.

Senator HEFLIN. Thank you, Senator Cochran.

Our first witness is Dr. Ronald E. Bird, professor of economics at the University of Alabama. Dr. Bird has a Ph. D. in economics from the University of North Carolina at Chapel Hill. He received his undergraduate work at Huntington College in Montgomery. His areas of graduate study were microeconomic theory and history of economic thought. Additionally, he had a background in econometrics, mathematical economics, and linear programing models.

Dr. Bird, we are happy you are here.

We also have Dr. Tyrone Black of Hattiesburg, Miss., who is the chairman of the department of economics at the University of Southern Mississippi. He received his B.S. and M.A. in economics at Texas Tech University, and a Ph. D. at Tulane University. He has served as the vice president for academic affairs at McMurry College and is a specialist in manpower economics and a consultant in labor relations.

We are delighted to have both of you here.

We will be delighted to hear first from you, Dr. Ronald E. Bird.

PANEL OF ECONOMICS PROFESSORS:

STATEMENTS OF DR. RONALD E. BIRD, UNIVERSITY OF ALABAMA; AND DR. TYRONE BLACK, UNIVERSITY OF SOUTHERN MISSISSIPPI

Dr. BIRD. Thank you.

I appreciate being invited to comment on Senate Joint Resolution 126, the proposed balanced budget amendment to the U.S. Constitution. I have come here today to support the proposed amendment. I believe that it offers a reasonable and prudent approach to help solve the complex economic problems facing our Nation. Ten years ago I would not have supported a proposal such as this. Perhaps the reasons why I, and others like me, have changed views on this matter may be relevant to the committee's inquiry.

Ten years ago I would have argued for flexibility in Government fiscal policy. I would have said that the ability to operate at a deficit when appropriate was a valuable and useful tool of economic policy. I think it is still true that flexibility in fiscal policy can be a useful

economic tool. Unfortunately, the experience of the past 10 years has revealed that the costs of abuse of Government deficit financing outweigh the benefits that may come from use of the tool under appropriate circumstances. Furthermore, there seems to be a bias toward increasing abuse of deficit financing. Attached to my statement I have an exhibit A, which shows that since 1960, the reliance on deficit financing as a proportion of the Federal total budget has increased from the 3–6 percent range to the 12–18 percent range.

The main influence which has led me to support the proposed amendment has been the record inflation of the past decade. Continuing and accelerating inflation is damaging to each individual and to the economy as a whole in at least three ways.

First, inflation erodes the motive to save. Expectations of inflation encourage consumption and debt rather than investment and capital formation. The result is the declining growth of productivity in key industries which we have observed in recent years.

Second, the inflationary process masks and distorts real relative adjustments among factors of production and markets within the economy. I tend to agree with Professor Hayek, who argues that while accelerating inflation may temporarily postpone some unemployment, when the inflation ends, the result is greater unemployment than would have otherwise been the case.

Third, inflation encourages inefficient allocational decisions in the public sector. Instead of making hard choices among competing programs and needs, public decisionmakers increasingly adopt an attitude that "we can have it all." This attitude is fundamental to the psychology of inflation. The result is unplanned and uncoordinated growth in the relative size of the Federal impact on the U.S. economy. An especially significant part of the problem is the growth of open-ended programs, which become in effect uncontrollable or nondiscretionary outlays. Exhibit B, which I have prepared and attached to my statement, shows that, according to the U.S. Office of Management and Budget, uncontrollable outlays rose from 42.9 percent of the Federal budget in 1970 to 57.4 percent of the Federal budget in 1978.

The growth of the Federal budget relative to national income is financed by two sources. The first source is an increasing reliance on deficit financing, which contributes to the causes of the inflation process. The second source is increased real tax revenue, which is collected as inflation moves the average taxpayer into progressively higher marginal tax brackets. To illustrate the tax effect of inflation, consider the typical Alabama family who had an income of $11,785 in 1975. If this family is composed of a husband, wife, and two children and claimed the standard deduction in 1975, its Federal income tax bill was $779. From 1975 to 1976, the cost of living went up up 5.8 percent. If the family's gross income increased in the same proportion, to $12,465, then the family should have been able to maintain its standard of living. Unfortunately, the income of $12,465 puts the family into a higher marginal tax bracket. Federal income tax in 1976 was $912. Federal income tax increased 17 percent while gross income and the cost of living went up 5.8 percent. An increased share of the family's real income went to pay Federal tax. This effect will occur each year that the inflation of prices and incomes continues.

Inflation also creates in this way a hidden tax increase. Exhibit C, which I have prepared, illustrates the tax effect of inflation for 1975 through 1979 for the hypothetical family.

[The material referred to above is on file with the committee.]

The proposed amendment would be a major step toward controlling both inflation and the unplanned relative growth of Federal programs. The amendment would not guarantee an end to inflation, but it would significantly increase the likelihood of price stability. While Federal deficit financing is not a sole or direct cause of inflation, deficit financing provides a major impetus toward inflationary monetary policy. I believe that the proposed amendment will create a fiscal policy atmosphere which will be conducive to noninflationary monetary policy as well.

Thank you.

Senator HEFLIN. Thank you.

We would be delighted next to hear from Dr. Black.

Dr. Black?

Dr. BLACK. Senators, I thank you for asking me to appear here today. I have prepared a paper and it is available to the record. What I would like to do, though, since the paper is a bit long, is to summarize some of the key points and present those here.

I agree that there is immediate need to reduce the size and frequency of Federal budget deficits and to restrain Federal spending. We have heard a number of facts regarding the size of the deficits and the growth of Federal spending, but I might add one or two.

The last time we had a budget surplus was 1969. If you look at the period 1970 through 1979, our Federal debt grew about $400 billion; from something around $370 billion to over $800 billion presently. In the fiscal year 1975–76 alone, the Federal debt grew about $160 billion, which was larger than the growth of the entire decade of the 1950's plus the entire decade of the 1960's. So you can see the increase in the rate at which we have accumulated the Federal debt. Also in recent years, deficits have had a tendency to become a large percent of gross national product, which I think means that they impact more heavily on the economy.

As far as expenditures are concerned, from 1950 to 1960, Federal expenditures grew $60 billion; from the 1960's to the 1970's they grew $100 billion; from the 1970's to the 1980's they grew over $300 billion. So, again, we can see an increase in the impact of government fiscal policy. A point which has been mentioned here, and I think an important point, is that as long as fiscal policy tends to be overexpansionary, it is going to be very difficult for the Federal Reserve System to control the growth of the money stock. There has been an increase in the money stock growth in the 1970's from about 6.2 percent per year—or, during the 1970's the growth was 6.2 percent a year, and that compares to 3.9 percent in the 1960's and 2.6 percent per year in the 1950's. So the rate of growth of the money stock has almost doubled on an annual basis in the 1960's to the 1970's, and has more than doubled, comparing the 1950's and 1970's. I think the reason for that increase, the major reason for the increase in the rate of growth of the money stock has been large Federal deficits. When the Federal Government continually is borrowing money at the rate it has been borrowing it in the 1970's, this tends to drive interest rates up, soaks

up loanable funds. The Federal Reserve System comes under pressure to come into the market, increase the money stock, push down interest rates, and to supply more loanable funds. This tends to generate inflation when the money stock grows too rapidly, and in many cases, instead of having lower interest rates, we end up with higher interest rates because those price increases are added on to the original rate of increase.

I think it is also interesting to look at Presidential election years, the last three elections. 1968, 1972, and 1976. In 1968 we had the largest Federal deficit of the 1960's, and the money stock grew more rapidly in 1968 than it grew in any other year in the 1960's: 8.1 percent that year. In 1972, another Presidential election year, the deficit was $23 billion, and again the highest rate of growth of the money stock in the 1970's: 9.1 percent. Then in 1976, the last Presidential election year, $66 billion deficit and a 6.2-percent growth in the money stock. I think these figures indicate that there is a tendency, you know around election time for the political process to respond with more spending and the Federal Reserve responds, also, with a higher growth of the money stock. The results of this expansionary monetary fiscal policy has been inflation. In the 1970's, the inflation rate averaged 7.4 percent. We know that this year our probable rate of inflation from the Consumers Price Index is going to be around 13 percent, and we had double-digit inflation in 1974.

Looking at the 1950's and 1960's, and the average rate of inflation was well under 3 percent during those decades. So there has been really an almost unbelievable growth in the average rate of inflation in the 1970's versus these earlier periods. As we have heard also today, the high rates of inflation have not been accompanied by varied economical performance in other areas. At one time we thought we could trade off, so to speak, some inflation for some lower unemployment. We could drive up the rate of inflation perhaps a little bit, but reduce the unemployment rate. Unfortunately, the unemployment rate has been higher in 1970 than the two previous decades. Productivity growth has declined. The gross national product hasn't grown as fast in the 1970's as it did earlier.

Well, turning to the amendment and specifically whether or not the amendment will help bring Federal spending under control and perhaps help solve some of these problems: I think there are some mechanical problems involved with the implementation of the amendment. Some of these have been recognized and recorded in the Congressional Record, so I don't think I'm telling you anything which you do not know. The big problem I see in terms of section 1 is that what we are doing is to estimate at the beginning of each fiscal year receipts and expenditures. Of course, the estimate of receipts is based on an estimate of gross national product. If, in fact, actural gross national product turns out to be smaller than the estimated gross national product, we will have a Federal budget deficit even though at the beginning of the fiscal year we anticipated a surplus. If that is the case, then I think the question arises, what do we do in the middle of the year; do you raise taxes or do you reduce the expenditures?

I did read in the Congressional Record where Senator Simpson indicated that the intent of the amendment was to deal with estimates at the beginning of the year. It would be estimated revenues or re-

ceipts and estimated expenditures, and as long as those were in balance at the beginning of the year, then no action would be necessary. Of course, the amendment doesn't spell that out. I presume it would be spelled out in terms of section 4.

I think another problem with the amendment has to do with off-budget spending, something which has grown a great deal during the 1970's. Again, remarks in the Congressional Record mention off-budget items, as the record indicates, would be covered. There are off-budget Federal entities, and these entities are presently running at outlay levels of about $10 million a year. There are also the federally sponsored enterprises, such as Fannie Mae, and I think these are around $25 billion a year. Then there are the loan-guaranteed programs. It is not clear to me which of these off-budget items would be and would not be included in terms of expenditures in the amendment. I think that is something that needs to be pinned down, because these programs really have a tendency to grow with time.

Another problem that we have to deal with has to do with the use of fiscal policy. If we enter into a recession, then economists have been saying for a long time that one of the ways to combat that recession is to have deficit spending. I don't think we want to get away from that concept. I think in a sense we are committed to it through the Employment Act of 1946. I think it is sound at certain times to run a deficit. However, the amendment does say that with a three-fifths majority, this particular section can be overridden, and that seems to me to be sufficient safeguard to take care of the problem of fiscal policy during a recession.

I really don't have much to add about section 2. I think, again, the problem of estimates, making estimations, enters into the application of section 2 as it did with section 1.

In conclusion, then, I do believe that it is important to restrain fiscal and monetary policy in terms of the continuous deficit that we have had, in terms of too rapid monetary growth. If we do not do that, I don't think we can solve the problem with inflation, and I think inflation leads to poor economic performance in general. I think something must be done. Therefore, on that basis, I would urge the adoption of the proposal. I do have a couple of reservations and these have really been raised previously. I think there are mechanical problems. I have mentioned some of these, and I'm sure that there are others which will make implementation of the balanced budget amendment difficult and the enforcement also difficult. I think that fiscal responsibility involves more than deciding whether or not to balance or not balance the budget. If economic conditions require deficit, a $20 billion deficit may create an economic disaster. The amendment will not solve this problem. It will simply say that we can or cannot have a deficit. Once we decide there is an emergency and we need one, it doesn't really restrain us from having a deficit which is too large, even under circumstances that might be construed an emergency.

Senator HEFLIN. I appreciate your comments.

Of course, there would be an act that would have to come along to set forth details. Generally in the language the Constitution would set forth the broad norms that you would guide by, and then you would have your estimates. You would have to have legislation which

would adopt a budget at a certain time in advance of your appropriation bills, and estimates, of course, would have to be made. I believe there are 40 States that have some type of a limitation on spending taxes, most of them having provisions that say you can't spend any more money than you take in. They require a calculation of estimated income. We in Alabama have that process, and its was my general observation, being the court, that those that estimated tend to estimate revenues fairly conservatively. Actually, we used to think that they did it too conservatively, but they end up having a balance at the end, and generally they did have a little balance where they operated, in effect, in the black. I think the only way I know you could approach it would be through some type of estimate of revenues coming in.

Are there alternative methods that you think of, Dr. Black, in this regard? Other than the estimation, is there a process other than that that you are familiar with?

Dr. BLACK. No, I think not. I think it would involve estimation. I agree with you, and I think done properly, this shouldn't be too much of an obstacle. I am a bit dubious at times in terms of saying, OK, we cannot restrain the level of spending presently. If the process doesn't work well now, I am not really sure it is going to work in terms of, you know, making the estimates. Maybe it will. Maybe it will reduce the bias somewhat toward Federal spending, but I know of no other way other than the estimation process.

Senator HEFLIN. Our experience in Alabama has been that the balanced budget constitutional provision provides a form of discipline for lawmakers or for fund appropriators and makes them basically have to make a decision between service of government and functions of government. Sometimes pet projects of chairmen of ways and means committees or finance, or something, creep in, but overall, I think it provides a forced selectivity in that they have to select those functions of State government that they think are essential, that are needed, and to give priority to, and they have to cut back on those that they consider less essential and appropriate money accordingly. To me, this discipline is something that is needed in the Federal Government. They have in recent years gone toward a budget process, and they have—after the various committees meet before the final appropriation bill is passed, they will have a reconciliation of the budget. Still it is not working as well as it would, in my judgment, if it was under a constitutional amendment.

There is legislation, for example, this year that requires the President, in the submission of his budget, to make the budget that he wants, but also to submit a budget that will be in balance, and I think that is a step forward. This discipline that I am speaking of, I think, is sort of essential.

Dr. Bird, in your study of various appropriating bodies where they appropriate money, do you feel it is essential that you have some sort of discipline and selectivity?

Dr. BIRD. Yes, sir; some sort of constraining influence to enforce a system, a procedure, and a discipline on the decisionmaking framework. To make the decisionmakers actually make decisions is essential, and I think that is one of the things that this amendment does. It provides a framework in which choices and decisions will have to be

made instead of just letting circumstances make the decisions for us. Yes, sir.

Senator HEFLIN. Do you have any specific recommendations on how to tighten up or improve this resolution?

Dr. BIRD. No, sir. I was paying particular attention to the point you made about the difference between constitutional language and subsequent details that will need to be worked out, I suppose, in enabling legislation, such matters as just technical details of satisfying section 2. You may not know down to the last decimal point the level of national income until some time has passed, but, there again, you are involved in an estimation process, and I think that can be adequately defined in specific terms in subsequent enabling legislation, I suppose.

Senator HEFLIN. What is your opinion on having in effect a limitation on taxation based on the previous year's relationship proportionate to the national income?

Dr. BIRD. Especially since it is not a hard-and-fast limitation, but merely sets a norm and requires—or, I believe in the wording of section 2, unless a bill directed solely at approving the specific increase in proportion has been passed.

Senator HEFLIN. In other words, it requires a majority vote but you have to face up to the specific——

Dr. BIRD. Right. That requires you to make a decision, make a policy decision about the impact of Federal Government, and I think that is good, and that is what you should do. Let these things happen by conscious decision rather than by ad hoc circumstances. I think that is one of the real strengths of the amendment, the concept that the impact of the Federal programs of the Federal Government on the national economy should be a matter of policy decisionmaking and not just a happenstance.

Senator HEFLIN. The bill that I introduced originally provided that the escape would have been based on the declaration of a national emergency, arguing that that in itself, the Congress, had to say that the following set of circumstances in fact constitute a national emergency. That would provide a discipline whereby Congress would not frivolously and unnecessarily declare national emergencies. It would be something that the media could either laugh at or say that is is justified or question. However, in an effort to reach a consensus, we left that out of this resolution.

I am concerned about the balanced budget amendment at the stage that we are in in relationship to national defense. I see the next 5 years as being years in which we must revitalize our national defense and must spend a good deal of money. Senator Sam Nunn and others want a 5-percent increase of real growth over inflationary growth each year in the military budget over and above what it is today. That 5-percent increase would help somewhat in catching up, but may be insufficient. I have real questions as to what has occurred in relationship to Russia and the United States in terms of expenditures of rubles and dollars and relating them back to dollars and then relating it to the issue of what the Russian dollar can buy where there is no profit margin in the purchasing dollar.

Can either one of you foresee some way of handling military growth as opposed to other segments of your programs that you have for the Federal Government? Do you have any thoughts on that? That is a

67-315 O - 80 - 2

perplexing problem to me as I approach this balanced budget, and know it is going to be a question that is going to be asked by a lot of people.

Dr. BIRD. It is a perplexing problem and certainly, as the amendment stands now, it will be necessary for all of us to make hard choices in deciding how to allocate the proportion of our national income that goes to Federal outlays. The military situation which you described simply means those choices will be all the more difficult to make in the years ahead. Some cherished programs may have to give way to more pressing immediate needs. That is what the political process is all about: making choices of that nature. They have never been easy choices. I don't really see any way to modify the amendment and maintain its thrust and intent and achieve any way to make those choices any easier. We are just going to have to, I suppose, face the hard political realities.

Senator HEFLIN. Many people think you can have, in effect, the way I would describe it, a meat ax approach, just across the board a certain percentage reduction. On the other hand, I think you could have a surgical approach by which you could cut out of certain services a considerable amount and a small amount of others. I'm not real sure, but I think the example today that our budget is running around $500 billion a year, that we will end up with about a little under a $30 billion deficit this fiscal year, which is not a high percentage basis. We came down last year from about $60 billion to $30 billion where it was cut in two. Actually, if you had a meat ax across the board, that would not amount to a tremendous amount. On the other hand, taking and cutting some 12, some 10, some 1, I think it could be approached. That choice, as you say, is a hard choice, but it may be very essential.

Senator Cochran, would you like to ask some questions?

Senator COCHRAN. Thank you, Mr. Chairman.

When I was a Member of the House of Representatives for Mississippi, I had in my congressional district a newspaper publisher, Aubrey Emery, one of our fine outstanding citizens in McComb, Miss. I had a practice of going around the courthouses in each county on a regular basis to meet with anybody who wanted to come in and talk to me about a problem, an opinion on legislation, or the like. I remember Mr. Emery came by one day when I was in McComb and he said, "I just have one question." He said, "How much Federal debt would we have to accummulate before the Federal Government becomes insolvent." So I told him I didn't know the answer to that but that I would try to find out. I went back to Washington and asked the Congressional Research Service in the Library of Congress to answer that question, and they sent me over a very heavy document after several weeks, and I tried from that document to answer the question and I couldn't.

Do either one of you have an answer to that question? Can the Federal Government—and I guess one way to rephrase it—go broke like an individual does? Can it become bankrupt, in effect, if there were a bankruptcy definition that would fit the Government?

Dr. BLACK. I don't think, in the usual sense of the term, because the Government can do something we can't; they can print money and

raise taxes, and we can't do that. I think you are only looking at Government spending and deficit. To me what is more important is when that deficit occurs. Does it occur in a full employment economy. It is not to me so important right now that the debt is $800 billion, but what is important is when that debt was accumulated. It was accumulated some years in the past when we shouldn't have had those increases. So it is not so important to me, at least, unless it's just the debt service becomes an extreme burden, and I think it is right now. Not so much the absolute size, but when it occurs. Undoubtedly, in the past 2 or 3 years we have had deficits that have been too large simply because the economy has been approaching full employment, and those deficits had to be inflationary. That is what I said a moment ago. It doesn't seem to me that sound fiscal policy is a matter of saying the budget will or will not be balanced, but once we have said it will not be, because of emergency or need for defense, or whatever, how unbalanced is it? Is it $20 million or $60 million or $2 billion? It makes a heck of a difference as to what impact that is going to have.

Senator COCHRAN. What about, Dr. Bird?

Dr. BIRD. Certainly because of the power to create money, among other things, the Federal Government cannot go bankrupt in the sense that a private individual can. The thing which we have to fear, however, is perhaps something even worse, and that is reaching a situation where Federal Reserve notes are worth less than Confederate currency. It is possible to continue the expansion of the money supply to the point that if it accelerates enough, you could have a crisis of confidence.

Senator COCHRAN. This is similar to what happened, I suppose, in Germany in the 1920's when so much money was printed that it, in effect, became worth very little or worthless.

Dr. BIRD. That is the extreme case. Of course, we are nowhere near that now. That was a situation where the money supply was being increased at thousands of percent a month as opposed to 6 to 9 percent per year as in our current situation. A hyperinflation. They do occur. I don't think we are anywhere near having to worry about that situation or about any semblance of bankruptcy.

Senator COCHRAN. Dr. Black mentioned what may be more important than in 1 year having a balanced budget as how far out of balance you permit the budget to be. What, as a Member of the U.S. House of Representatives or the U.S. Senate, should one look at and consider in determining whether to support a budget that is out of balance? We are going to have this flexibility built into the law if this resolution is passed, and there may be times when we are confronted with a motion or other type act to vote on. What do we look at?

Dr. BLACK. You look at the unemployment rate. There is some disagreement, I guess, among economists in terms of what full employment is, but I would say somewhere in the range of 5 to 6 percent is probably the best we can hope for. As the unemployment rate approaches the 6-percent level, I think if you see much of a deficit, you know, as it approaches the 6 percent, that is the time for a balanced budget. Look at the growth of real gross national product. As

long as it is growing in the 3-percent range, I think you feel the economy is healthy and doesn't need stimulus from the Federal budget. So I think those two items are key items to look at: The unemployment rate and rate of growth of gross national product. It is not a foolproof way of making a decision, but I think it will help.

I think one thing the amendment does, which I think is good, is, it says that now 60 percent of Congress has to decide that there is a need for the deficit spending rather than 50 percent. I think that counters the bias as far as spending more and not putting taxes on people to pay for it.

Senator COCHRAN. Because when you get right down to it, the real test up there is the ability to say no in the interest of the Nation's economic health rather than in the interest of your own political situation. That is where the real test is in all of this, and I guess that is where they will separate, how do you say, the men from the boys. We can't say that any more because of Nancy Kassebaum being in the Senate, so, separate the tough political person from those not so tough; that's the way to put it, when that three-fifths vote time comes.

I appreciate your testimony. Both statements were excellent and very helpful. Thank you very much.

Senator HEFLIN. Let me ask you one other question. Since the dollar has gone on the world market, do you foresee the possibility of bankruptcy, or what has occurred in some other nations, as more probable now that the dollar is on the market? We have not had it on the market before, but we have a market that fluctuates and our dollar goes up and goes down, and with our increased inflation rate, it seems to be going down certainly in relationship to the monetary system of Switzerland, Japan, and West Germany.

Dr. BIRD. Whenever you have two counties with different inflation rates, or one with price stability and the other with inflation rate, the currency of the economy that has inflation will depreciate relative to the currency of the economy that has price stability. So the value of the dollar has fallen relative to the value of the Swiss franc because the purchasing power of the Swiss franc is more stable; they haven't had as much inflation, or the German mark. In terms of relating that to the concept of hyperinflation, I don't think there is any clear connection there, and I really don't think that that, as dramatic as that sort of event is and has been in the times it has occurred in history, that is not the real danger we are facing right now. The danger that we are facing right now from inflation in this country is less dramatic, but in a way much more severe. It's the slow continual erosion of productivity, distortion of markets, and loss of discipline, not only because of the inflationary psychology, loss of discipline not only in public decisionmaking, but also in private decisionmaking.

Look at the record of consumer debt in the last couple of years. It's at an unusually high level, and some would say that that is a source for unease. So the danger from inflation we face is real, but not of the dramatic nature that you see in the historical accidents or incidents of hyperinflation.

Senator HEFLIN. Thank you. We are going to call the next three witnesses as a panel. If you have to leave, we understand, but if you

are around, there may be some questions that might be brought up as a result of the testimony of the other witnesses that we might want to ask you about. If it won't serve any inconvenience, we would appreciate your sticking around.

[A short recess was taken.]

Senator HEFLIN. It is our pleasure to have a panel of media and public sector to testify in regard to this.

Mr. William J. Hearin, the publisher of the Mobile Press Register and also the publisher of the Pascagoula daily newspaper is here. Mr. Hearin has been very active in civic affairs and public interest affairs. He has been chairman of the Tennessee-Tombigbee Water Committee of Mobile Area Chamber of Commerce for a number of years, and is a past chairman of the Salvation Army. He has received numerous awards, including Lion of the Year from the Lion's Club. He was cited by the Mobile United for his outstanding leadership in development of the Tennessee-Tombigbee Waterway, and Selected Mobilian of the Year by the Civilian Club. I believe he has been active in almost every conceivable thing that had made progress here in this section of the State. He, of course, has been the general manager of the Mobile Press Register since 1944. He became executive vice president of the corporation. Then in July 1965 he was made co-publisher and became publisher and president in January 1970.

Mr. Kenneth Giddens is a well known national figure, having been director of the Voice of America and assistant director of the U.S. Information Agency from 1969 to 1977. He is owner of WKRG-TV, WKRG-AM/FM here in Mobile. He has served as a lieutenant in the U.S. Naval Reserve. He serves presently on the Committee on the Present Danger in Washington, and also serves as president of the Alabama Broadcasters Association.

We are delighted to have from Jackson, Miss., Mr. Thomas Druey, who is the State coordinator of the Mississippi Conservative Caucus, and has been for 3 years. It is a corporation of 2,000 to 3,000 members; a grassroots, nonpartisan, nonpolitical organization. He is the publisher of the Quest Publications of Jackson, Miss., and has had 15 years of experience in the retail and rental clothing business in Jackson, Miss.

It is a pleasure to have you three gentlemen here.

You might, Senator Cochran, tell us a little more about Mr. Druey. I just had a brief memorandum about his background, but you know him well, of course.

Senator COCHRAN. Thank you very much, Mr. Chairman. It is a pleasure to welcome all of these witnesses, and particularly Tom Druey, who is a citizen in the State of Mississippi. Tom has been very active in public and civic affairs in the State and one of our fine, fine citizens. Besides, he is a personal friend of mine, and that is really the reason he is here. I appreciate your letting me have the opportunity of inviting someone from my State to be a part of this panel.

Senator HEFLIN. Mr. Giddens, if you would, we would be delighted to hear from you first, and we can move right down the table.

PANEL OF MEDIA OFFICIALS:
STATEMENTS OF KENNETH R. GIDDENS, PRESIDENT, WKRG-TV, MOBILE, ALA.; WILLIAM J. HEARIN, PUBLISHER, MOBILE PRESS REGISTER, MOBILE, ALA.; AND THOMAS DRUEY, PUBLISHER, QUEST PUBLICATIONS, JACKSON, MISS.

Mr. GIDDENS. Thank you, Senator. Senator Cochran, I want to congratulate you gentlemen on the leadership you are giving toward leading this Nation to fiscal responsibility, which I think it has sadly lacked in the years gone by, and I admire the action that you take. I always liked initiative, however, recently some recent events have given me considerable alarm, particularly those events of the Middle East. Having been kind of a semistudent of geopolitics, I can see the tremendous danger that faces this Nation, and for the first time in my life, I have become seriously worried about the future and what is going to befall this Nation unless vigorous, courageous, and far-sighted leadership and action take place. I am more worried about that today than I am even about the fiscal irresponsibility that we are suffering from, because that is domestic and is somewhat within our own ability to control. What worries me very, very much is the threat by the Soviet Union, which has stated time and time again that they are at war with us psychologically, and now actually moving to surround the oil in the Middle East.

Being deeply involved in such things as Committee on the Present Danger, the Heritage Foundation, the Coalition for Peace Through Strength, the Alabama Security Council, and serveral other such organizations and operations, I am clearly aware of what these threats are in the Middle East. If they can deny us the oil of the Middle East, on which all Western civilization depends, Western Europe, Japan, and North America primarily, it can bring us to our knees economically and we can have times that will make the 1929 depression look quite good.

That takes me back to what happened in World War II. In World War II the mood of the country was pretty much what it is now in this country. Neither we nor our allies, England, France, were very well prepared. Mr. Roosevelt, the then President of the United States, being a farsighted man, realized that we must save Western Europe, that England must be strengthened, and so he began to do things, make moves that he later admitted was sufficient to have him impeached.

I cite you the great book, "A Man Called Intrepid," which pretty much tells the story of what Mr. Roosevelt did as President of the United States to save Western Europe, to arm England primarily and France secondarily. They actually moved a large part of the British Secret Service to Radio City in New York. When convoys would go to Europe and England, long before we got into the war, by chance there would be military convoys, our own naval units virtually escorting them across.

The delivery of those things and actions that Mr. Roosevelt took probably saved Western civilization, a much deeper subject than most people realize, and I think today that we should be moving very, very fast to arm this Nation. I think there ought to be—that

Mr. Carter should today have troops on American transports going to Sinai and establishing a presence in the Middle East.

I think they should be being flown in there by aircraft, and that we should immediately start arming this Nation in a substantial way by the construction of naval vessels, aircraft, live bombs, cruise missiles, and that if necessary, we should do it almost without regard to cost, except show some of the prudence of a prudent man, but realizing the primacy of this other. Because if the oil of the Middle East is denied Japan, Europe, and this country, we may not continue to be the premiere country of the Earth.

So, believing these things and having the benefit of memory of how the President was forced to take almost subversive action to protect his own Nation, it bothers me that we are going to have a constitutional amendment that might tie the hands, put the Executive in such a straitjacket, that he couldn't take the active actions that might be required in times of great peril.

We are not at war today, and yet if even a 4- or a 5-percent increase in military expenditure is suggested, there is a considerable following within the two Houses of Congress that are opposed to that type of thing. If we had to pass or nullify or set aside a constitutional amendment, with the time it would take, it might be fatal to even the survival of this Nation and it gives me pause. Though I applaud sincerely the effort to bring this fiscal responsibility to the country, I am worried that if we had to, after such an amendment were passed, that we had to have a three-fifths vote of both Houses, with the delay, the dilatory tactics, first one thing and another that would be set up to delay it, it might make absolutely essential action impossible. I would hate very much to think that Mr. Roosevelt, when he actually bent the laws and probably broke the laws, would be so inhibited, because then Hitler might have survived and the course of human history would be greatly different than what it is today.

I would like to suggest, gentlemen, that you think about these things as well as the benefits and the virtues, the admitted virtue of this effort to put fiscal responsibility into both Houses of Congress and the administration, because these negative aspects of tying the hands, of handcuffing the President, creating a delay that would be interminable, to me poses a very great threat. So I want to commend you on your leadership for what you are doing, but I do say, let's think about this thing a little more and from a totally different point of view.

Thank you.

Senator HEFLIN. Thank you, Mr. Giddens. You certainly raised something in my mind. I'm not sure that the provision of the resolution which allows that Congress may waive the provisions of section 1, which is the one that says you can't spend any more money than you take in, with respect to a single year in which a declaration of war is in effect, could be amended to take care of what you were thinking about by having the language being a national emergency. Certainly if Afghanistan, and in the event of a renewed commitment to revitalize American strength—a provision is needed which would take care of that rather than have to have a declaration of war. You very finely point out that the period of time prior to World War II, 1939 to latter part of 1941 when Pearl Harbor occurred, was a buildup time in which we were able to help England and help France. If it had not been for

that, I think you are correct that England would probably have been invaded and might well have been conquered by the Nazis at that time. So I think the point you raise is a very valid one and, hopefully, as we pursue this, we can come up with some sort of language. Of course, the difficulty, you see, is that all except military—well, if you put all except military, then you don't cut others, by the same time it may well be that you cut others, but you still can't cut them 1 year or 2 years; maybe you have to have a 3- or 4-year approach to cutting to bring it back to where it might be. I think it is very pertinent.

Do you want to comment on anything to Mr. Giddens at this time?

Senator COCHRAN. Not at this time.

Senator HEFLIN. Mr. Hearin, we would like to call on you next for your comments, please.

Mr. HEARIN. Senators, to prove I support no one party, I am glad to say that I have one Democrat and one Republican with us today, and I supported both of them. I always try to support the best man, and I think we have been fortunate in having you win your races and the jobs you are both doing in Washington and what you are doing today, because I am certainly for this amendment. I would like to read a statement here that is down into the basics and commonsense. I think everybody will understand it.

Good business practices pay off, whether it be in business and industry or government. Even the housewife recognizes the necessity of planning in operating her household. Had the U.S. Government operated on a pay-as-you-go basis from its beginning, then we would not be faced with the huge budget deficits which today milk funds to pay the tab for the Nation's growing indebtedness. We are a long way from controlling the national debt. We will be even further from that goal unless we act now and take the first step toward complete fiscal responsibility. It is a tough step. That step is to require a balanced Federal budget through a constitutional amendment. It is possible. I think it is, and I'll tell you why. Anyone involved in the top management of a business or industry periodically assesses the progress made. If expenses are climbing and revenue declining, there are troubles ahead. Steps must be taken to reduce expenses and increase revenue to a workable balance under those circumstances.

The problems of Government are similar. Yet, over the years, when it became necessary to increase revenue in the face of soaring Government costs, the usual solution was to increase taxes. There was another solution, but it was rarely used in the Halls of Congress. That solution seems rather simple, possibly too simple. Usually when funds are appropriated, no provisions are made to provide the necessary funds to meet the allocations. It is like printing unsupported paper money. You just print what you need until that day when you finally discover that the money is worthless. We are doing the same thing when we continue, year after year, to adopt deficit budgets. The national debt grows to the point at which the tax revenues are no longer sufficient to meet the needs. Some economists in Government will tell you that this is the wrong approach. I disagree with them. The housewife soon finds out when she is overextended. Her credit is cut off. A businessman finds out when he is overextended, his credit is cut off, and if he does not make the necessary adjustments, his business is bankrupt.

If tomorrow the Government of the United States was required to use that same criterion, this Nation would be bankrupt. It becomes apparent, then, that something is amiss in Washington. What has the Chrysler Corp. done that is any different from what has been done by Washington? Fortunately, Chrysler will have help in bailing itself out.

Who would or could bail out the Government of the United States under like circumstances?

The key wording of the proposed budget amendment is simple. Anyone can understand it, even a Washington politician.

Listen to this sentence from the draft:

The Congress shall not pass and the President shall not sign any appropriations bill which would cause the total expenditures for any year to exceed the expenditures in the budget for such year.

The Nation might find the going a little tough in the first year of a balanced budget. The second year would be easier. Soon a balanced budget would be the accepted procedure, and at that point in time we could begin to whittle away at the national debt. I see the balanced budget as a tool which will help those who run our Government carve a new approach to fiscal responsibility.

Senator HEFLIN. Thank you, Mr. Hearin.

Mr. Druey, if you will, we will be delighted to hear from you.

Mr. DRUEY. Thank you.

Senators Cochran and Heflin, I thank you for allowing me to present the position of the grassroots conservative citizens of Mississippi. I would like to commend each of you as freshmen Senators for your diligent efforts in bringing this to pass. I will say that I am for the amendment; however, I think it is too little, too late. I don't think we can afford to wait 7 years for the State to ratify it and 2 more years for it to go into effect, because if the same trend continues the next 9 years as in the past 9 years, we will be so broke we can't pay attention.

Now, gentlemen, I would like to present five reasons why this resolution should become law. I think it should be law quicker, of course. They are as follows:

First: To restore confidence in the Government's ability to handle money, since elected officials are handling taxpayers' money and not their own.

Second: To protect and preserve the free enterprise system.

Third: To curb inflation.

Fourth: To eliminate government debt.

Fifth: To reduce the interest on the national debt.

Second, I present three measures that will make the balanced budget possible without sacrificing creature comforts. They are as follows:

No. 1: Stop waste now.

No. 2: Stop cheaters.

No. 3: Cut taxes.

Let's go back to why the budget must be balanced: To restore confidence in the Government's ability to handle taxpayers' money.

I saw a recent poll that said that elected government officials were rated on trust lower than used car salesmen. My apology to the car salesmen.

Less than 45 percent of our people are registered voters. In my opinion, this is true because people really believe that their vote

doesn't make any difference since another politician will be worse than the last one.

Three, taxpayers feel that their money is being wasted on goods that they did not order, services which they do not need, and rules and regulations that interfere with progress more than they promote progress.

Four, since the taxpayers' liability has reached, according to the National Taxpayers Union, $9 trillion—I don't know how much that is, I really don't—the blame is squarely placed on elected officials' shoulders. The taxpayers see no hope for a free economy with such a hopeless debt. Gentlemen, elected officials have destroyed our grandchildren's future.

I read someplace recently a quote by some great philosopher who said: "The tradegy in life is not that one dies, but what dies inside of one while he still lives." Do you see this picture? Something inside of America has died. I think it is confidence in elected officials and hope in this future.

Second, to protect and to preserve the free enterprise system.

When this country was young, our forefathers went west in covered wagons searching for their fortunes. They didn't ask for any handouts or guarantees of success. They were searching for a valley and they said: If we can't make a living by our own labor and ingenuity, we will die in this valley. If we can't defend ourselves from all adversaries, we will die with our rifle in our hands.

Then came centralized government that said, in effect: What you make we will take. Today, as a result of this centralized government with its philosophy of taking what we make, we have more than 14 departments and over 75 agencies strangling business. We should reduce or eliminate altogether those Federal regulatory agencies that help contribute to both inflation and recession.

To curb inflation: Government spending and inefficiency cause inflation. Taxpayers with limited family income, the poor, the needy, suffer while Government and Government workers flourish.

I know a family who is completely dependent on social security. After more than 50 years of labor in the most prosperous nation on Earth, they must turn off the heat at night, wear old clothes, and be real careful with grocery buying in order to exist. Inflation is the most cruel tax of all.

Then, to eliminate Government debt.

My banker will not allow me to build up my debt beyond my ability to repay, whereas elected officials just print more money and increase the deficit and pass the bill on to the taxpayer. We can never pay our debt until we have a balanced budget. I submit to you that we need a surplus to reduce this $9 trillion taxpayers' liability. Now, there is a question of whether this $9 trillion is really a right figure. Gentlemen, I don't think anybody knows how much we owe.

An individual who won't pay his debt is considered a deadbeat, and so no one will place any confidence in him. If the Federal Government does not pay its debt, is it a deadbeat? I think so. Should the taxpayer trust Government or its officials? The taxpayers have loaned the Government all that we can afford. It's time to pay up. The Government really owes this money to the taxpayers, because that's where they got it from.

To reduce the interest on the national debt.

A recent study by the National Taxpayers Union revealed the astonishing figure of $85,000 per minute interest on the national debt. That's $51 million per hour. Can the taxpayer ever see a time when we will have this cost removed? The taxpayer is asking: Is that figure in the budget, that interest figure, or is it off budget expense? When we consider that a child born today is more than $100,000 in debt, can we afford not to eliminate the interest on this debt?

Next I would like to impress on you that it is possible to balance the budget, eliminate the national debt and interest, without disturbing too many creature comforts. I think that it is possible if we do the following:

First, stop waste. Billions of dollars are wasted annually on 900,000 totally ineligible welfare recipients; $200 million annually is spent to perform useless research and to shower favored professors with grants. There are 23 biographies of Issac Newton in the Library of Congress, yet the Federal Government wants to spend $10,000 for yet another one.

Second, I think we need to stop cheaters. Three billion dollars is stolen annually from health programs, yet the Federal Government has fewer people investigating this than it has manicuring the White House lawn.

Again, $250 billion is spent for foreign aid, including $10 million to Uganda's mad dictator, Idi Amin, and the United States has financed both sides in 14 wars during the last 20 years.

Three million dollars on the President's White House Conference on the Family is authorized, yet in Mississippi we are allowed approximately 1 hour for 200 people to discuss vital issues which will result most likely in legislation as solutions to family problems.

Millions of dollars are spent to fund food stamp cheaters while able-bodied men and women do nothing productive. I think it is time to put able-bodied men and women to work on public projects if they receive public support.

I believe that it is time to stop wasting taxpayers' dollars to appease our worldwide enemies. They are taking our food, our technology and burning our flag.

Then, I think we need to cut taxes. If the freedom of individuals and free enterprise is to survive, we must cut taxes in three areas:

First of all, on interest. When we have earned profit or labored for income and have paid taxes on our earnings, it is unfair for the Government to tax the interest earned on our savings. That is double taxation. It is no wonder that Americans are not saving. We are being penalized for thrift. While the Government rewards the spendthrift by allowing him to deduct interest expense paid on debts, thrifty Americans are being punished. So some people are following the bad example that the Government is putting before them.

On dividends. When we take our after-tax dollars and invest in public corporations or individual businesses, the Government should not tax our increase. Since this would encourage reinvestments for further growth, investors should be free to make that choice.

Personal income. I personally believe that the Government should be limited to no more than 25 percent of our individual income.

I might add here, gentlemen, it is not in my printed remarks, but if that is all we had to run the Government with, I think we would put some priorities on some things and cut out some freeloaders.

Gentlemen, one of the problems I see that we have in America today is, we are educated beyond our level of intelligence. Any high school boy would have sense enough to know that if you take 10 marbles to school and you lose 12 of them every day, it is not going to be long until you are going to owe everybody in school if you keep borrowing marbles. This is just plain commonsense.

I thank you, gentlemen, for allowing me to present our position. I would like to emphasize again that I believe, and the conservative citizens of Mississippi believe, that we need a balanced budget in this country, but we need it now. We believe it is possible to achieve this balance budget without sacrificing a lot of comforts if our Congress will take the steps which I have outlined today. If Congress fails to act on this vital question, in my opinion and in the opinion of my fellow citizens, we have no hope for the future of our country.

Gentlemen, when you establish a business, as I have, and over a 15-year period you look at your records and the Federal Government has taken more out of your business than you have, and then you ask the simple question of what did I get for my money, would you say that we have, gentlemen, an efficient energy program? Would you say, gentlemen, that we have an intelligent foreign policy? Would you say, gentlemen, we have a strong national defense? Would you say that we have clean rivers and harbors? Would you say that we have a good highway system? The only three things that I see that we really have for the money that you have taken from our pockets is the biggest bureaucracy on the face of God's Earth, the worst postal system that you could possibly imagine, and really the worst economy that has been propped up. I think that free enterprise—when people get to the place where their goods and services are no longer needed, they will find something else to produce or some other service to render or there will not be a market for their labor.

Thank you.

Senator HEFLIN. Thank you, gentlemen; we appreciate your thoughts on this matter.

Mr. Druey, let me ask you—I assume you have an organization, the Mississippi Conservative Caucus. There are some other national organizations that are strong supporters of this move to balance the budget, one of which Mr. Giddens is a director of, the Heritage Foundation. Senator Cochran has a booklet in which they show some critical issues here, such as balancing the budget. The National Taxpayers Union has been strongly supporting this. For a while the effort was made to spotlight the issue on the balanced budget by calling for a constitutional convention to amend the Constitution. A great number of people have fears of that, including myself, but it was bringing pressure on Congress. That procedure requires 34 States to adopt resolutions, and it is my understanding that only four more would have to adopt resolutions. They might have to get them in some similarity of language. Many people were predicting they might adopt those resolutions calling for a constitutional convention. With this amendment now, what do you foresee that organizations—well, just say your Conservative Caucus—I know Senator Stennis, of course, is

for it and actually he introduced a resolution himself, and Senator Cochran here has been vitally interested in working for it, but it seems to me that organizational help can be very helpful in this regard, and I was wondering if you, having worked with an organization, have any suggestions as to organizational activities to help create the atmosphere that is conducive to adoption of the amendment?

Mr. DRUEY. Yes, sir. I publish the Conservative Voice of Mississippi, which is a monthly publication. We have approximately 10,000 circulation now. We can inform our members, you know, of this deal and we are going to, at our next issue, and I would like to have a copy of this testimony, if I may, and we will run the whole hearing.

I think the problem, gentlemen, in the country today is, people really don't know whom to believe. Every time I hear Walter Crankcase, or whatever it is, Cronkite saying in the evening news, "And that's the way it is," I want to jump up and say, gentlemen, that is not the way it is at all; that is just the way it looks. It is really worse than that, but I think if we inform the people as to exactly what the situation is here, I think the people will rally behind anything that will help them. And we, our taxpayers, the people who invest the money, the little people out there that really make this thing work, really need some help. They need some breaks.

If we run our business, as Mr. Hearin said, like the Government runs their business, our bank would close us down. We absolutely have to become fiscally responsible in this country and gentlemen like you, who go to the Congress of the United States, have to stand up and be counted instead of hiding in the closet, and be a good one-term Senator rather than a bad 40-year Senator. That would be my thinking, because I think that many organizations—I am very familiar with the Heritage Foundation and their work and the National Taxpayers Union and, you know, many other organizations, worthwhile organizations, that will rally behind this.

Again, I think the fear will be here, the timeframe. Is there no way that this bill can be expedited? If it was a new tax we were going to put on, you could have it on by Monday morning. How come we can't do something about this in 90 days rather than 9 years?

Senator HEFLIN. Well, hopefully, they would act much faster than the 7-year authorization. It doesn't mean they would take that long to ratify—the State legislation to ratify—a constitutional amendment if Congress approves it for ratification. In the meantime, it could well be that if this is adopted, then you would have interim legislation which would be legislation and not constitutional language, to require it. I would hope that that could occur.

I spoke to the economists before, Mr. Hearin, about the discipline that is inherent in a constitutional provision like we have had here in Alabama. I know you are a keen observer of the State government and all governments. Most of our—I don't know what our situation is with your local units of government, but county and city government in most instances try to operate on a balanced budget. Would you give us your comments about the State, how it has practiced over the years? Do you recall, back at one time, I believe it was the Fletcher Act—I don't know; that was before my time—but we had had during the depression some tough days in regard to this and Alabama strengthened its laws to see that we did have a balanced budget.

Mr. HEARIN. I think all State, county, and city government in Alabama now have to live within their budget.

Senator HEFLIN. Mr. Giddens, you smiled a little bit I guess about the depression days when we went in in Alabama and our experience at that time. Would you care to comment on any of that? You are not that old, though.

Mr. GIDDENS. Oh yes, sir. I was that old. The fact of the matter, I was Assistant to the Director of the U.S. Reemployment Service for this State for a while and I saw—I'll never forget—one man particularly came to my desk and sat on it; he wouldn't get off. He had a pregnant wife, no job, no money, no food in the house, and he sat there and wept, begging me for jobs which I didn't have to give him. I have seen the depression years, lived through it. When I went to college, I didn't have enough money to eat but two meals a day, and that was the worst thing that ever happened to me. So I actually felt the pains of hunger.

I believe in a well run business. With this opportunity, I would like to say that in the old days when I was a general contractor and we had some big jobs and we had to do them fast, I used to walk through the field with a bunch of pink slips in my pocket and when I found someone goofing off and not working, I walked up to him and gave him his pink slip and told him to go get his money. I recall hiring as many as 20 men a day sometimes. I didn't have to do it much, just every once in a while, and the word would get around; but running the Voice of America for 8 years, I was never able to fire a man. No matter how stinking and no good and trifling he was, I had to promote him. There is a man that, because of advice of counsel and personnel, and so forth, we couldn't fire; I sent him to Greece. The last time I knew, he was drawing about $40,000 a year and getting about a $25,000 a year supplement for a residence over there. Still couldn't be fired and not doing a damn thing for the Government or anybody else. The system is such that that type of thing happens. It's horrible. I agree with our very eloquent friend over here on my left who talked about the waste in government. I'm for that.

I still want to remind you that I am very concerned about putting our President and other people in too rigid a straitjacket that they will not have sufficient freedom of action that can get us out of some of the bad days which I think I see coming, and particularly before the consciousness of the American people wakes up to the danger of an impending disaster. I don't think half the people of this country realize what would happen to us if Russia closes the grip that they now have on the oil of the Middle East. It is very frightening, and the more you know about it, the more frightening it becomes. They are now in a position that they can sink every ship that comes out of the Red Sea and the Persian Gulf. They have daily military patrols out of Aden and the Island of Socotra. We are facing some of the bleakest prospects this Nation has ever even conceived, and we must leave adequate latitude for brave men to take action without violating the Constitution. That's the only thing that concerns me about this thing.

Senator HEFLIN. I share your concerns.

Senator Cochran?

Senator COCHRAN. Thank you, Mr. Chairman. I appreciate Mr. Giddens identifying that possibility that with a constitutional amendment we might put a new set of handcuffs on our Government. So I think we do have to be very careful as we proceed to consideration of this proposed amendment that the flexibility we need to permit expenditures of necessary sums to enable us to move quickly and effectively to improve our military preparedness. It is possible. I can remember several years ago the predictable thing to happen would be for the President to recommend a budget to the Congress and the section relating to defense expenditures would be cut just as regular as the clock turned around. That's the way it would happen during the Nixon administration, during the Ford administration, and military spending was way out of vogue with the military efforts. Then we saw what some were saying would be the Vietnam dividends. They were collecting the dividends by cutting the defense appropriation that the President was sending to Congress.

Now that is turning around a little bit and we are seeing Congress, particularly the Senate, move toward a position of increasing the military spending part of the budget, or pushing for increased expenditures such as this identified by Senator Heflin on the part of Senator Nunn and others who are very interested in an increase in that part of the budget. We are not sure right now what the House would do, but the House of Representatives traditionally has been less inclined to approve increased expenditures for defense than the Senate has. We don't know if that has changed or not, but it is a problem and I think we need to think about it. If you are going to have trouble getting 51 percent of a legislative body to agree to an expense figure, how much more difficult would it be to get 60 percent to agree to that figure if you, at the same time, would be spending more than you predict you will take in in that next year. That is something I think we need to think about.

This budget that is coming up this next year, according to what the President said Sunday night, will have about $160 billion in it for defense. That is an awful lot of money, and I don't know if it will represent the 5-percent increase in defense in real terms. So we are going to be confronted with some hard choices in the next several weeks as we receive the state of the Union address on January 23 and proceed to consider the proposed budget. It is going to be a budget that will be out of balance by an expected $10 to $15 billion. It kind of brings us back here to where we are. Evidence of a continued trend in deficit spending, or something that is necessary because of our defense interest and the internal situation, those are tough choices we are going to have to make.

I appreciate the statement by Mr. Hearin, pointing out some commonsense observations about economy and about the Federal Government. As the Federal Government, we don't have to throw all the rules of supply and demand out the window. We need to rely on them.

I appreciate very much Tom Druey's being with us and giving us the benefit of his thoughts and observations about this amendment, about the problems with the deficit spending, and the role of government generally. I think that is very helpful to the committee,

will be very helpful to us in trying to formulate a policy and then try to implement that policy through effective legislative acts, and I appreciate very much your taking the time to be down here with us.

Mr. Chairman, thank you again for convening the hearing. I don't have any other questions as such, but I appreciate the leadership you are showing in the Senate.

Senator HEFLIN. Dr. Black and Dr. Bird, do you have any further comments brought out by any of the witnesses on the panel that you would like to comment on?

Dr. BLACK. I don't, sir.

Senator HEFLIN. Well, all of you raised the issue of paying the national debt, and that is certainly a long-range goal that we are moving toward, but I suppose the immediate goal is trying to get the budget in balance, cut out deficit spending in a manner by which the military strength of this country can be revitalized. It is a difficult task.

There are quite a large number of Senators and some Congressmen interested in this. It may well be the next election will bring, as it did this year, 20 new Senators, the vast majority of which I believe will express the opinion of the public that there needs to be fiscal responsibility in government as well as a revitalization of military strength. I am well pleased with the freshman class. I believe there are 20 altogether. There were 19 new male Senators and 1 female Senator. In my judgment, out of that 20, 14 of them would be classified as leaning toward fiscal conservatism and toward a strong national defense. I don't think a close—which to me is an indication of the people speaking. Thirty-four Senators will be up for election this year, and if that trend continues, then I would anticipate that we would be moving to two goals in mind, a revitalization of military strength and a fiscal responsibility of government.

Well, if there are no other comments by witnesses, we will adjourn. Thank you very much.

CONSTITUTIONAL AMENDMENT TO BALANCE THE FEDERAL BUDGET

FRIDAY, FEBRUARY 22, 1980

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Salt Lake City, Utah.

The subcommittee met, pursuant to notice, at 10 a.m., at the Hotel Utah, Bonneville Hall II, Salt Lake City, Utah, Senator Orrin G. Hatch, presiding.

Present: Senator Hatch.

Staff present: Stephen Markman, minority counsel.

OPENING STATEMENT OF SENATOR ORRIN HATCH

Senator HATCH. Thank you so much. It's such a nice welcome to come home and see you good people here. We really appreciate having you here with us.

I might add that on December 19 of last year, the Senate Judiciary Subcommittee on the Constitution, on which I serve as the ranking minority member, approved Senate Joint Resolution 126, proposing an amendment to the U.S. Constitution to require the balancing of the Federal budget. It was the first such amendment ever to be approved by a congressional panel after more than 40 years of debate inside and outside Congress. The bill presently has 25 cosponsors including eight on committee. There are 17 on the committee so we are one short of passing it through the full committee. A full Judiciary Committee vote is now expected to take place by mid-March. This is one of several committee hearings designed to explore the need for this amendment.

I might mention with regard to the committee itself that there are a number of undecided so we do have an excellent opportunity of getting this particular amendment through the Judiciary Committee.

As one of the principal authors of Senate Joint Resolution 126, I am obviously a supporter. While I feel strongly that the constitutional amendment process should be looked to as a last resort, I am convinced that it has now become necessary if our Nation is going to be able to overcome its growing economic difficulties. Let me briefly describe some of the symptoms:

An inflation rate, presently in excess of 13 percent, that is making it nearly impossible for individuals and families to save and plan for their futures.

67-315 O - 80 - 3

A growing rate of unemployment that is giving lie to the traditional economic notion that full employment can be created by generating inflation.

A declining rate of industrial productivity and growth, closely related to the fact that investment capital for the private sector has become increasingly difficult to find.

A weakening U.S. position in international trade, marked by a severe and sustained decline in the dollar.

Increasingly heavy tax burden upon the private, productive sector of the economy. The average worker today labors nearly 3 hours out of each working day to pay his or her taxes.

Finally, a steadily declining standard of living for the average American. The real, after-tax income available to the average American family has been reduced for most of them during the past 10 years.

What is responsible for this situation? Currently there are no indications that the future will bring a reversal of these trends. While there are a variety of factors, by far the dominant one is the fiscal irresponsibility of our Federal Government.

Consider if you will some of the following things:

In the past 23 years, there have only been 2 years in which there has been a balanced budget.

Further, the size of our annual deficit has been rapidly growing. During the decade of the 1970's, our Nation suffered the eighth largest peacetime deficits in its history.

Our total national debt today is approaching $1 trillion. Nearly one-half of this total has been incurred during the past 10 years. In other words, in 10 years we have almost gone up $500 billion in the national debt. I might mention that that's only part of it because the experts say we have somewhere between a $4 to $7 trillion unfunded debt in this country. Those are debts that we have to pay for in the future but for which we have no projected revenues to pay for them, so it's a serious, serious problem and a terrible legacy that we are leaving to our children.

Now in the President's latest proposed budget, the third largest single expenditure is interest on just the national debt. By the end of this year it will approach $1 trillion. At the beginning of the 1970's, it was around $500 billion so the increase has been serious. The third highest item on the Federal budget is $70 billion and that's just for the interest on the debt. People have been deceived into thinking that all we have to do is borrow from ourselves and print more money and pay the debt. That just isn't true. In order to pay the debts, we have to actually pay them. If we print more money, inflation goes even higher.

Now growth in spending has out-raced even the spectacular increase in taxes in recent years. The first $100 billion budget in our Nation's history occurred in 1962, 173 years after the founding of the Republic. The first $200 billion budget occurred in 1971, 9 years later; the first $300 billion budget in 1975, 4 years later; the first $400 billion budget in 1977, only 2 years after that. The new budget proposed last month contains well over $600 billion in new spending and I suspect by the end of 1981 it will approach $650 billion.

Our Government, in short, has attempted to live outside its means for far too long. It has sought to convince the American people that deficits do not matter, that there is such a thing as a free lunch. It has

blamed inflation on the businessman, upon the worker, upon the consumer, upon the farmer, and upon the middleman, upon everyone, but itself. Yet, it has not succeeded in doing this. Public opinion surveys show nearly 80 percent support for a balanced budget amendment, while 30 State legislatures have formally called for a constitutional convention on an amendment of this sort.

One point that I cannot emphasize enough about Senate Joint Resolution 126 is that it is not only economically sound, it is constitutionally sound. Unlike many other amendments that were considered by the subcommittee, and I might mention we had 40-plus constitutional amendments to balance the budget; so there are many, many Senators and Congressmen concerned with this and believe that that's what we should do. I might say that this amendment is succinct. It is relatively free of technical economic jargon and it avoids the use of arbitrary numbers. Most importantly, it is in the nature of a constitutional amendment as opposed to statutory legislation, in that it seeks only to amend the processes by which economic decisionmaking takes place.

It seeks only to eliminate present biases in the system that favor higher levels of spending and taxing. It does not attempt to substitute itself for the political process and require specific economic policy decisions.

The two major provisions of Senate Joint Resolution 126 are united by two common elements. First, they are designed to make Congress accountable for its budget decisions.

Section 1 states that the National Government will live within its means, balance its budget, unless Congress by an open, rollcall vote of 60 percent of its Members or more is willing to spend in deficit. Section 2 states that if Congress raises taxes, it will also have to do that in the open. It will not be able to let inflation do its dirty work simply by pushing people into higher and higher tax brackets.

Let me give you an illustration. When President Carter became President in 1977, as I recall, the total Federal revenues from private taxpayers was around $131 billion. Three years later as a result of inflation pushing all of us into higher tax brackets, the total revenues coming to the Federal Government from personal income taxation in this country was better than double the $131 to $268 billion. In 3 years they doubled our taxes without raising the rates one nickel or 1 percentage point, and it was through inflation that they did it.

I might mention that that's how the Federal Government has done it through these years. It's one of the ways, because every time inflation goes up 1 percent, the Federal Government revenues go up 1.65 percent. In other words, the Government benefits from inflation and it gets more revenues, so it can go out and buy more votes. That's the Central Government.

There is another way that the Government does it to you; let's take a perfect illustration; the windfall-profits tax.

There is only one group of people put together that are less in a steam than the U.S. Congress and the American people, and that's the oil companies; and there may be justification for that, but what they did, they created a scapegoat out of the oil companies. We are going to nail them because they have these windfall profits and we are going to on behalf of the consumer go out there and get those

windfall profits and be able to do more for the people and the country with them.

Well, in addition to inflation that's the way they do it to you so they've agreed to tax the oil companies over the next 10 years $227.3 billion. The only problem is that the big oil companies don't pay taxes. They fill out corporate tax returns and they send them in but they don't pay taxes. Guess who pays those taxes? They add it to the cost of their goods and services that they sell to us and guess who is going to wind up paying $227.3 billion without knowing it for the most part in this country? It's going to be you. It's going to be the consumers of America who will pay higher costs for energy in this country.

Now the Federal Government will get $227 billion making it look like they are going to nail the oil companies who perhaps deserve to be nailed, but you are going to pay the tax and the Federal Government will go out and institute new spending programs which all of us will be paying for without telling you that they have been taxing you.

I might mention to you that they said yesterday that about $57 billion of those dollars they are going to give back to you in tax credits. To be honest with you, you are given $227 billion, you are getting $57 billion back and I might mention that you are the big losers and that's the way they've done it through the years. Instead of taxing you directly, they tax you indirectly by nailing the oil companies. They are paying them when, in fact, you are paying them.

By the way, I'm on the Budget Committee and you will be interested to note that in the Federal Budget of the United States of America, Charlie Shultz, the head of the Council, Jim McIntyre, and no less than Mr. Miller, the Secretary of the Treasury, came in and testified that of the budget of $616 billion which Carter has proposed, 76 percent of that budget is uncontrollable: 76 percent—that means that they have gone out and bought votes with special constituencies and they can't cut down those votes because Congress won't do anything about that. Jim McIntyre said this, the head of Office of Management and Budget, the worst problem America has today is these uncontrollables, and that's what Congress has done to you.

I would just like to say that section 1, of course, states that the National Government will live within its means. That means it has to balance its budget unless Congress by an open, rollcall vote of 60 percent of its Members is willing to spend in deficit.

Section 2 states that if Congress raises taxes, it will also have to do that in the open. It will not be able to let inflation do its dirty work simply by pushing people into higher and higher tax brackets.

The second common element is that they insure that there will always be some form of political disadvantage associated with new spending programs. This is not presently the case. There are incentives to spend back there. Because of section 1, Senators and Congressmen will, if they support new spending, also have to support reductions in spending elsewhere. Because of section 2, Senators and Congressmen will, if they support new spending, also have to support tax increases to cover that spending. That means direct tax increases so you know what they are doing to you and you can throw them out if you don't like it.

In other words, the ongoing battle between the spending lobbies in Washington and the taxpayers will be greatly equalized. The political advantages that Senators and Congressmen accrue by responding to the spenders will no longer be free. Congress will no longer be able to support the spenders unless they will also be willing to antagonize other spenders or to antagonize the American people with new tax increases.

I thank everyone in attendance for coming to this hearing. This is an issue of the first magnitude. I am confident that our outstanding list of witnesses will do much to shed further light on this matter.

[The text of Senate Joint Resolution 126 follows:]

[S.J. RES. 126, 90th Congress, 1st session]

JOINT RESOLUTION proposing an amendment to the Constitution to promote fiscal responsibility

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE—

"SECTION 1. The Congress shall adopt for each year a budget, which shall set forth the total receipts and expenditures of the United States. No budget in which expenditures exceed receipts shall be adopted, unless three-fifths of each House of Congress approve such budget by a rollcall vote directed solely to that subject. The Congress shall not pass and the President shall not sign any appropriation bill which would cause the total expenditures for any year to exceed the expenditures in the budget for such year.

"SEC. 2. The receipts in any year shall not exceed, as a proportion of the national income, that collected in accordance with this section in the prior year, unless a bill directed solely at approving a specific increase in such proportion has been passed by each House of Congress by rollcall vote and such bill has become law.

"SEC. 3. The Congress may waive the provisions of section 1 with respect to any single year in which a declaration of war is in effect.

"SEC. 4. Terms used in this article shall be construed in accordance with their meanings on the date on which this article was submitted to the States for ratification.

"SEC. 5. This article shall take effect on the first day of January of the second calendar year beginning after its ratification.".

Senator HATCH. We would like to call upon the Honorable Robert B. Hansen, the attorney general for the State of Utah, concerning this constitutional amendment.

STATEMENT OF HON. ROBERT B. HANSEN, ATTORNEY GENERAL, STATE OF UTAH

Mr. HANSEN. Thank you, Senator. I'd like to express my appreciation to Senator Hatch for your giving us the opportunity of expressing our views here that we would not otherwise have an opportunity to do if these hearings were held in Washington, D.C., as they usually are. I think it certainly is an indication of the tremendous interest the people of Utah have in this subject that we have a standing room only crowd here today and I certainly am encouraged by that because I think this is the single most important governmental reform that could possibly be enacted by the Congress to turn things around.

I think we are pretty well all convinced here that things really hav
to be turned around.

Senator HATCH. Bob, if I could, let me announce that they ar
going to bring in more chairs for you folks that have to stand in th
back. I hope it won't disturb you, Bob.

Let me add there will be witnesses pro and con on this bill toda
and I think it would be very interesting to listen to both sides an
get the very best for our folks here in Utah.

Mr. HANSEN. The Senator has referred in his opening remarks t
the record in the proceedings that are published in the Congressiona
Record on December 19, 1979, and it appears to me in reading tha
record, and I would hope that all of you would obtain a copy of tha
and read it because it truly is excellent in giving you an understandin
of how important not only this is but how well drafted are the provi-
sions of this proposed amendment to accomplish what needs to be
done. Having read that, it would be virtually impossible, I think, for
me to add anything substantive to the rational reasons why this con-
stitutional amendment is not only highly desirable but I think essential
to the well-being of our society that such an amendment be enacted. I
say for the benefit of our society because I think that America plays
such a pivotal role in world affairs, particularly in the free world, that
civilization as a whole rests largely on how well things go here in the
United States.

I would like to offer three reasons why I favor this amendment in
addition to the excellent reasons that have been so well set forth both in
the Record as I was referring to and by the Senator today and also
Senators Simpson, Thurmond, DeConcini, and Heflin in that order, as
they are reported in the Congressional Record, their main thrust being
as I read it that this reform is necessary to restore balance between a
bias in favor of increased Federal spending and opposition to increased
Federal spending since the present system does not provide a fair fight,
because the forces of prospending at taxpayers' expense consistently
overwhelm the antiforces as evidenced by the fact that the Federal
budget has only been balanced nine times in the last 50 fiscal years since
1930. I would also like to address some of the arguments that I under-
stand are being made against this amendment.

As for my three reasons: First, I submit that the present budget
process is immoral. It is immoral because what it actually does is to
"rob Peter to pay Paul." Here "Peter", of course, is the generations of
future taxpaying Americans. The "Paul" is the present beneficiaries of
the Federal largess funds produced by increasing the national debt. I
think we need to outgrow the morality of Robin Hood and the wishful
thinking that there really is a Santa Claus in the District of Columbia
who will provide the goodies without requiring payment for the costs of
the goods and services that Uncle Sam provides. We need, I think, to
return to the wisdom of Benjamin Franklin as to the virtue of thrift,
both personally and as a nation. We have paid only lipservice to the
ninth Boy Scout law with respect to thrift. It is time that we became
honest with ourselves and take whatever action is necessary—such as
this amendment—to not only strive to live within our means, within
our budget, as we have tried to do unsuccessfully under a statute
Congress passed by the purpose of requiring a Federal budget but
that we actually do do it and, of course, that to me is the benefit

and importance of having a Constitution so that the legislature itself is bound to do those things which the people through the constitutional amendment process have required and directed be done. I think it's time that we stop robbing the future. It's time that we start behaving responsibly to avoid the disaster of national bankruptcy. I think there are those who think that national bankruptcy is impossible, but I think there are those who would argue not too many years ago that it would be impossible for New York City to go bankrupt.

The second reason that I think this resolution that should lead to the amendment is vitally important is because it would result in a much needed boost in morale of our people. Inflation is a most demoralizing fact of life and there appears to be no solution or relief in sight. There is a feeling of helplessness and frustration. I think the message that the California voters sent to politicians everywhere on June 8, 1978, is the direct result of resentment of more and more taxes in order to support ever-growing governmental expenses. State and local governments by and large have, I think, responded appropriately to this, the will of the people. Of course, the relative impact of State and local spending compared to the Federal spending is roughly equivalent to a minnow swimming alongside a whale. The passage of this resolution would provide the light at the end of the tunnel that people need to have in order to believe that they do have control over their economic future through their congressional delegation.

The third reason I have for urging passage of this resolution is Utah's actual experience. As you all well know or should know, the Utah Constitution in article 13, section 9, requires that State expenditures be kept within revenues. Having had some experience in the budgetary process, not only during the last 3 years that I have been the attorney general but under the direction of my predecessor, Vernon Romney, who assigned me the responsibility of presenting our appropriations request to the legislature, I know from personal experience how that process really works on the State level. I know that every request for increased funds—and we have found needs to make such requests in our own budget—must really be justifed on a cost-benefit basis because we know that our request for increased expenditures is competing with every other request for increased spending. If there was no requirement that our State legislature balance the budget, there is no doubt in my mind but what we would have had over the 11 years that I have been involved in this process: probably deficit budgets in every one of those years. Having observed firsthand how a constitutional provision really does require a legislature to be responsible and they know going into that season that they have got to balance. The Governor knows when he submits his budget to the legislature it has got to be in balance.

Now it's true there is always some little disagreement as to what projected revenues are going to be, because there are economic facts that the legislature doesn't have control over, such as resulted in our 4-percent budget cut this year; but when those things occur, then under our Constitution necessary adjustments have to be made and I think that would be a great blessing if Congress has to make such adjustment also.

Now I talked to Prof. Jefferson Fordham who will be testifying in opposition to this amendment today last night and had obtained some

of the thinking that those who oppose the amendment I think wil
present. The first that seems to concern those opposed to that is tha
this amendment would be an adverse reflection on the institu
tion concerned, to wit, the Congress, the legislative branch of the
Federal Government, and the solution he would propose for irrespon
sible voting on behalf of the Congress is the discipline of the Members
when they are up for election at the ballot box. Now I would submit
that that is an unsatisfactory solution to the problem because that so-
called remedy has always been there and it has never worked. When
you have 41 unbalanced budgets out of 50 then you know that that
system as it presently exists is simply not working and I would believe
without knowing the exact statistics that the number of Senators and
the number of Congressmen that have been turned out of office for
voting for increased expenditures are an awful lot less than the per-
centage of balanced budgets that we, in fact, have had during these
years. In other words, the proposed solution to the problem that this
amendment addresses has been tried and it's been found wanting.

Now true, under this amendment as Senator Hatch has explained
there isn't any restriction on Congress spending more money, but in
order to spend more money—there isn't a spending ceiling under this
proposal—they have to increase taxes in order to balance the budget.
Pork barrelism won't flourish under that restriction.

Finally, I understand that the objection is with respect to the very
nature of the constitutional amendment being as Professor Fordham
calls it a rule of law as distinguished from a constitutional principle. I
think that he is indicating there, as I understand his concern, that you
are by this amendment looking not only the Congress but also the
courts into the interpretation of this, the meaning of the words in this
amendment and there is a provision in it that says specifically that this
amendment will be interpreted in accordance with the meaning of
those terms as they now exist, not with respect to some evolving stand-
ards that the judges feel would be applicable in future years, and I
think that solidifying as to what the meaning of those terms are is
something that's objectionable to those who oppose this type of dis-
cipline upon our Congress. To me, that argument is not one that would
dissuade me from embracing this amendment but commended it more
so because then it's not subject to how nine judges in black robes see
individually to interpret it and too often engage in social policymaking
under the guise of constitutional law. Thank you very much, Senator.

Senator HATCH. Thank you so much. We appreciate the testimony
of our attorney general and I know that he works with this every day
and he has, I think, informed us very well on his interpretation of the
constitutional amendment.

Our first panel will include some of our State legislators: Repre-
sentative Norman H. Bangerter, Representative Gary Brockbank, and
Representative Kevin Watt. Representative Bangerter is a member
of the Appropriations Executive Committee. Representative Gary
Brockbank is the vice chairman of the Revenues and Taxation Com-
mittee. Representative Kevin Watt is a member of the Social Services
Committee. All three of these committees have a lot to do with spend-
ing in the State of Utah and we are very happy to welcome you, our
State legislators, with us today and we will be interested in your par-
ticular points of view. We would like to have your points of view
on record, so whichever way you would like to proceed is fine.

PANEL OF STATE REPRESENTATIVES:

STATEMENTS OF NORMAN H. BANGERTER, MEMBER, APPROPRIATIONS EXECUTIVE COMMITTEE; GARY BROCKBANK, VICE CHAIRMAN, REVENUES AND TAXATION COMMITTEE; AND KEVIN WATT, MEMBER, SOCIAL SERVICES COMMITTEE

Representative BANGERTER. We appreciate the opportunity of being here with you today and the attorney general, I think, left his watch. I don't know if that was for me or for someone else but he may wish to have that back.

We think about limitation and balanced budgets. You are aware that we have been working with those two questions during the last 2 years, particularly in the legislative sessions, and Representative Brockbank has been particularly the keyman or the point man in carrying that type of legislation for the Republican Party in the State of Utah.

First, I'd like to say that I believe all of us here would agree that the fiddler ultimately has to be paid and that we have successfully avoided the paying of the fiddler for the last 40 years in this country and that now all of us are starting to feel the pinch directly. We have had signposts out in front of us for a long time with our elderly citizens and our poor and those that are on fixed incomes that say you can't let this thing go on, but we have continued to let it go on until now there is hardly anyone in our society who is not feeling the pinch of the inflationary spiral.

Senator HATCH. Let me make this point quite clear, that we have balanced the budget in this country seven times in the last 51 years. In other words for 44 of the last 51 years, we have failed to balance the budget. We have only balanced it seven times. I think the attorney general said 41 out of 50 but actually we failed to balance it 44 out of 51. Go ahead, Norm.

Representative BANGERTER. Thank you. At any rate, I think the question really boils down to how tough are we as legislators in dealing with the State budget of Utah and how tough are the Federal legislators in dealing with the Federal budget, and I think history would dictate that we are not tough enough and particularly they are not tough enough in dealing with balancing this budget. Now I would say that it isn't an easy thing to bring in constitutional limitations, something that we have tried to do on a State level and have not at this point been successful in passing a real constitutional limitation on spending, and so we recognize the problems that the Federal Government has to deal with as they address this question of whether or not they should pass the constitutional balanced budget amendment. Of course, I support that provision but I would just like to give you some reasons why I think we need to have that.

First reason is it's always easier to legislate tax reductions than tax increases. It is just simply easier to cut someone's taxes than it is to raise them. That's the first thing.

Second thing, by using deficit financing politicians can spend without the apparent necessity to tax, thereby incurring the public favor so we get a series of self-interest groups highly organized lobbying

for their particular program and they make all kinds of logical and plausible reasons why that program should be in effect and it's very difficult to stop that, if we are not under the crunch of taking it away from somewhere else in order to fund it.

Third, inflation cannot be arrested without correcting the underlying evil budgetary deficits.

Fourth, once started on the deficit path it becomes increasingly difficult to turn back. Maybe we could say impossible to turn back. We haven't done it yet.

Fifth, because budgetary deficits are a major cause of inflation, they tend to aggravate unemployment by eroding real profits and increasing tax liability.

Sixth, this budget deficit frequently comes at the wrong time and aggravates an already inflationary trend. We see that something needs to be done, so we print more money and have a deficit economy and by the time it gets into the public sector, the sector has already turned around, we have started to right ourselves and then this additional money comes in and additionally causes the inflationary spiral to continue.

Some flexibility is necessary, I believe, in constitutional amendments and that can be gained through the proposed constitutional amendment. I don't think it's quite tough enough, however, I think that in thinking about the flexibility and the three-fifths override provision and the simple majority for raising the tax are not tough enough and maybe gives too much flexibility. In that area I would like to see a stricter, a higher vote requirement to override and some emergency provisions such as war or overriding provision before this constitutional balanced budget could be set aside.

The eighth reason is the strength of the Nation's economy, and the stability of social and political systems in the United States depends on the vitality of the private sector. Excessive Government spending and deficit financing have weakened the private sector.

The last reason, the potential beneficiaries are often the numerical minority and they have a stronger incentive to organize and put these programs upon the backs of the taxpayer. Now as I say, I don't think that a balanced budget amendment will totally solve the problem. I think it will go a long ways toward solving it, but there are in our State and local governments which have a requirement to balance the budget, I think we have allowed our budgets to grow too rapidly so just this one means will not really solve the entire problem and I think we really ought to take a look at and we have been trying to do that in the State, of limiting government expenditures to a percentage of real income or of the gross national product or whatever formula you want to tie it to.

Today approximately 40 percent of all of our money goes to government entities. I think the Federal Government take has risen from 18½ percent of the gross national product to 22 percent in the last 3 years. That's a very significant change when you add the inflationary impact on those figures, so I think it's clear that if we don't do something the time will come when the fiddler will be at our doorstep. He's already at mine. I don't know if he's at yours but he's at mine. The government policies have essentially aborted my business—I'm in the building business and you try to sell a house today to some-

one at 13 percent interest. They would love to buy it but there is no way that they can pay for it so we have effectively priced our people in this country and in this State out of what has been the American dream, the dream of owning your own home.

Now if we don't do something to reverse that trend and do it quickly and responsibly, we will effectively have taken away the American dream of owning your own home. As it is, we have reduced the size of that home from 1,500 square feet to 900 square feet, which is a bare two-bedroom, one-bath home which people can live in comfortably, but we are reducing; everything is geared at reducing our standard of living and I'm just not convinced that that's necessary. I think it's necessary if we are going to change that if we do something to limit the growth of the Government.

I would say that on balance I support this amendment. It may be the best that can be done given the political climate and the political makeup of the Congress. I would certainly hope that it could be toughened up in some areas before it's sent to the voters, before it's sent to the State legislatures. I would hope that they could increase the requirement to override an imbalance in the budget and I would hope that they would put a tougher provision as a reason for considering override.

I appreciate the chance of being with you here today, Senator Hatch, and of giving this testimony, and I would hope that we would all rally around those that are striving to do this and really put our full efforts into bringing back fiscal sanity to the United States. Thank you.

Senator HATCH. Thank you, Representative. The next speaker will be Representative Kevin Watt. Let me make a couple of points here. We have some 45 proposed constitutional amendments. I could have supported any of the 45, but didn't particularly support a couple of others that might have been more stringent than this one that requires two-thirds vote to override et cetera. On the other hand, we have to deal with reality. We have both parties there and this was the amendment that we could bring an effective coalition together on. I might mention instead of two-thirds vote it would take a three-fifths vote or 60 votes in the Senate to override this balanced budget requisite and that was as far as we could go and get the majority that we got. We passed this in December. I think it was 5 to 2 over the objection of the chairman of the subcommittee, Birch Bayh, the Senator from Indiana, and his ranking majority member, Howard Metzenbaum, the Senator from Ohio, and that was no small achievement because for 40 years we have tried to get a balanced budget amendment through and this was the only one we could get through.

Now our next step as I've said is to go to the full Judiciary Committee before March 15, and to try and win there. We have eight cosponsors there in the Judiciary Committee which is comprised of 17 members, so we need nine votes or we need a couple of those members to be absent in order to get it through, and in an election year I think one or the other is going to have to occur or they are going to have to face that in an election year because the people in this country do understand this. If we get it through the Judiciary Committee, then we have high hopes we can get a vote up and down on the floor

of the Senate. If we do that, the pressure will be immensely on the House.

Keep in mind 30 States have requested a constitutional convention to mandate a balanced budget. Now that is a different system than has been used for the consideration of 6,000 proposed constitutional amendments of which only 33 have come through. The only system used, and that is a two-thirds vote by the House of Representatives and the Senate with a submission to all of the States for a three-quarters ratification by the States. Of those 33, only 26 have been amended. Of the remaining seven there are only two left and that's the equal rights amendment and the District of Columbia voter representation amendment. It is a very difficult process. The other process is the States, if you can get two-thirds of the States or 34 of the States to demand the Constitutional Convention then the Congress has to call the Constitutional Convention for the purpose of amending the Constitution.

Now there would be a tremendous mores in trying to get that done because of the 30-State demand for a constitutional convention. Almost all of them are different in form so those who don't want to balance the budget or who don't want a balance-the-budget amendment in the Constitution are already saying unless they are all in exactly the same form those 30 States are considered as one State, so you can see this is the way to go. If we can get the Congress to adopt this balance-the-budget amendment and this is the best we can do and it really is a good one, but I agree with Norm—it would be better if we had a higher requisite, but we just can't do it.

I thought it would be at least interesting for you to know some of the battles we have had to fight to get this one where it is, but a 60-percent vote is a considerably high vote. We happen to know that because that's the same vote that it takes to invoke cloture on a filibuster. It's very, very difficult. A number of filibusters have been prevented by one vote. It will be difficult for them to override the mandate balanced budget provision.

Representative Watt, we will be interested in what you have to say. I might also mention that several other State legislators of both parties had been invited to testify and, unfortunately, had conflicts in their schedules and could not make it today. These were not the only three that were invited to testify. However, we are happy to have these three because they have been champions in trying to balance the State of Utah budget and certainly putting pressure on the Federal people to balance their budget.

Representative WATT. I wanted to say, Senator Hatch, that this is a unique opportunity for me because it's not very often that I get an opportunity to compliment Congress on doing something for us instead of to us.

Senator HATCH. I like that comment even though I'm a Member of Congress. I think it's very appropriate.

Representative WATT. I believe it was Senator Hayakawa that said during a budgetary process you spend a billion here and a billion there and before you know it, it's added up to some real money. Representative Bangerter has enunciated how we handle balanced budget requirements within the State so I would like to go back in time for a little bit.

The effects of this constitutional amendment touches an intellectual discipline that in my opinion is both capricious and imprecise in nature.

I hold in my hand a book which has, in my opinion, more profoundly affected the lives of people in this country in the latter half of this century than any book produced in this century. It was first printed in 1935 under the rather innocuous title of "General Theory of Employment, Interest, and Money." During the twilight of Franklin Roosevelt's administration, the philosophy this book propagated came to be accepted as almost axiomatic among the economic advisers of the Roosevelt administration. The philosophy, dubbed as Keynesianism after its somewhat legendary author, enjoyed a profound revival in the Kennedy-Johnson tax cut, and has played an enormous role in the economic policy of this Nation during the past two decades.

Stated altogether too simply, this ideology endows the Federal Government with the responsibility of fine tuning the economy. This fine tuning involves policies of deficit spending during recessionary periods to stimulate demand and tax increases or spending cuts during inflationary periods to choke off demand.

This is admittedly a shameful simplification of an involved and complex theory, but it serves to remind us of the philosophy under which the economic machinery of this country has functioned during the past score of years.

If we discount the effect of deficit spending upon the money supply and interest rates, an effect which is in itself considerable, we find in Keynesian economics a utopian ideal which captures the best of all worlds.

We find a business cycle which fluctuates narrowly and appreciates gradually. We find the economy at equilibrium with full employment and steadily rising productivity.

We also find a utopian ideal, as we find with most utopian ideals, that it becomes impractical when we inject the human element. When the bump up against the harsh realities of the real world, we find a Congress incapable of restraining its own insatiable appetites for spending. The deficit spending side of Keynesian economics comes easily to Congress. However, when the classic Keynesian response to inflation calls upon Congress to incur surpluses, or to raise taxes and/or cut Government spending to choke off demand, we find a legislative body, which must account to those who will suffer as a result, naturally reluctant to do so.

A quote from Prof. J. R. Hicks, who was formerly at Oxford University—he is now retired, a noted economist. He said:

> Ideas which arose in the thirties, and which were appropriate in the thirties, have been carried over through Keynes' influence into a world where they do not at all so obviously belong.
>
> The control—the Keynesian control—cannot be properly exercised until there is a government that is strong enough to take unpopular measures and to assume responsibility for them.

And that is a problem we have. We have a Congress that is reluctant to take unpopular measures and the economy is in a circumstance that requires those measures to be taken, in my opinion.

It therefore remains for the States to relieve Congress of this dilemma by galvanising into constitutional law a balanced Federal

budget requirement. I find the proposal that we are presented with to be both moderate and timely.

I highly commend the Senators who came together and found a middle ground upon which they could lay down their differences for the benefit of us all.

The three-fifths override provision is a moderate and acceptable middle ground between those who recognized the problem and wanted no mandatory change and beyond the simple majority and stringent two-thirds vote requirement before the budget could go into deficit.

Making such an override vote exclusive of other legislative matters and requiring a rollcall vote for such an override brings into the Constitution something desperately necessary for the economic survival of this Republic—accountability at the Federal level. It would be wrong to imply that this amendment would be a panacea for the economic ills that inflict us.

The problems that would evolve from the passage of this amendment are most obvious. We have a problem with forecasting exactly what gross receipts will be. We have that to a much smaller degree in this State. This will naturally be a problem of forecasting. I believe the best estimates could waver between $5 billion to $10 billion so Congress would be called upon to construct a budgetary situation which would generally always be in surplus, either that or construct a fund into which they could delve if the budget did go into deficit. We had a temporary problem when the State Governor asked State agencies to temporarily cut back their expenditures because our revenue receipts were not what they had been forecasted to be. These are problems that are natural to this kind of legislative action but I think that they are problems that are much more preferable than the consequences we suffer in the absence of this resolution.

In conclusion, I am delighted at the moderate tenor of this document. I highly commend this Senate subcommittee for acting expeditiously and rationally to deal with this pressing problem.

It is my sincere hope that I, as a member of the Utah State Legislature, will one day have the privilege and responsibility of voting yes on this vital addition to the Constitution of the United States. Thank you.

Senator HATCH. Thank you. The last legislator who is here today is Representative Gary Brockbank, the vice president of Revenues and Taxation Committee and, of course, a leader in the fight in the State of Utah; we are very happy to have you with us today, Gary.

Representative BROCKBANK. I really don't have any prepared speeches or prepared remarks. I was under the impression that we were going to testify.

Senator HATCH. That's what you are doing. We are taking down every word you are saying.

Representative BROCKBANK. I'm not sure I feel comfortable with that.

Let me suggest some fundamental things and one of the reasons that I've really gotten involved in politics and become involved particularly in tax matters. To illustrate what we are really talking about here, it's very difficult. We are talking about a Federal deficit of $6.5 trillion. Now I find that very, very difficult to relate to. It's kind of

beyond my thinking ability, but let me bring it down to you as taxpayers and to me as a taxpayer.

If you take that $6.5 trillion and break it down into the taxpayers of this country, it would mean that each taxpayer now has a debt of a little over $130,000. Now I don't know how well you do. I know how well I do but with that kind of a debt, I'm worried.

Additionally, in the last year that debt went up by over $17,000 per taxpayer. Now if you can appreciate, that's probably as much or more money that most people earn in a year who are on average salaries and this is the kind of problem that we are dealing with. Now in the Utah State Legislature we are among those States that have petitioned Congress to pass this resolution and I am grateful for them doing it. If we gave them the opportunity that there would be a constitutional convention, I think most people would hope that the Congress would act responsibly. I agree that the tenor of this is moderate. It's workable and I think it's something that certainly will benefit us in the coming.

With the magnitude of that problem, I think the other comment that I would make is I don't think that we should be here in this room thinking that this is going to be a panacea. This is not going to cure all. This is not going to stop inflation. Many people say, well, if the Federal Government will balance the budget inflation will go away. That simply isn't true and I don't think we should be remiss in dealing with that.

Inflation is caused by many things. It's caused by credit that we have. In this country we live on credit. It's caused by deficits in foreign trade. It's caused by a credit float that we have in our banking system, but the primary precipitator of inflation in more recent years has been deficit spending on the part of the Federal Government. We've talked about that in great length but I think we need to understand that it not only precipitates inflation but it causes many other problems that accumulate to help fuel the fires of inflation. Our economy, private enterprise economy relies heavily on being able to borrow and working on capital.

Now when the feds come into the money market and borrow the money as they need to do to cover their own debts, that drives up capital in the private enterprise market. We have had a very difficult time in more recent years and it becomes more difficult every year of getting capital to improve machinery and equipment to build plants. We have enough money to send to a lot of other countries to help them build their plants and machinery but we don't have the courtesy through our own economic process of allowing our people to borrow in the money markets because that money is being borrowed up by the Federal Government to meet some of these deficits.

Now if you want to follow what is going to happen to inflation, you can follow the money supply. Now you've heard in more recent years and, in fact, just the other day I was listening on the news, there is a very real trend for following and trying to dry up the money market so that we can curb inflation.

Now how we get into this program is that as the feds spend in deficit, they will float bonds or other means on the market to borrow the money. As that money is borrowed, then the money supply is increased.

Now this again is an oversimplification but very simply if you follow the increase in the money supply, you can begin to predict pretty well what inflation is going to be anywhere from 3 to 9 months later and it is critical that we begin to balance the Federal budget because it is the prime precipitator of inflation, but the point I want to emphasize is it's not the only precipitator of inflation. The very method of our economy precipitates inflation but most of us can live with very moderate, maybe 4 percent. but when you get into double digit inflation we catch people on retirement incomes and we just do irreparable damage to our society. We pull the money out of the market so we can increase our productivity and as a result we spend more and more money on welfare programs to help these people. It seems to me that it would be much easier to allow ourselves to use this capital to build production and build our industry.

The second thing that I would suggest is as we've watched the Federal budget grow we need to understand where this money is being spent. Traditionally the largest part of the budget was spent on defense, but we have recognized that well over one-third of the Federal budget is now in transfer payments. We simply take a group of money for one group of people and we transfer it to another group of people. A part of that is in Federal payroll but a good portion of that is in direct transfer payments to individuals, social security, retirement programs, moneys back to the States, many of these things. We continue to collect taxes and move them around to these areas.

Let me make a third comment in passing. When we passed the resolution Utah State Legislature requesting that the Congress to pass this sort of amendment, we also requested them to call a constitutional convention in the alternative within weeks after and as Senator Hatch has mentioned, there are also 30 States that have passed with only 4 more needed. This is a State's rights program, this is a people's program. This isn't something that economists have been trying for and clamoring for or Sentors or legislatures or we would have had it. The Gallup Poll shows 80 to 90 percent of the people in this country want a Federal balanced budget and over 80 percent of those people want a constitutional requirement for a balanced budget, so this is a grassroots thinking.

Now if we say, well, people don't understand, then I think we do a great disservice to the electorate. They understand household budget. They understand when they have to borrow money to buy something but they also understand that that has to be paid back and that interest has to be paid and they have to have the means to pay that. Now when the State passed this budget, within weeks after that we had a lot of rhetoric coming from Washington. Senator Muskie was among them saying that the money would be dried up from the States, that they didn't know what they were doing, frankly, and I say this in all candor. I think the States would rather collect their own taxes and pay their own bills and not have to rely on Washington and not be tied to those kinds of programs.

I don't think that it is. I think they recognize the nature of budgets, the nature of the economy. Whatever else we are, we are willing to sacrifice and that has been shown. President Carter, and I don't remember—President Ford came out and asked us to sacrifice in certain areas. Governor Matheson asked us to sacrifice in fuel economy.

President Carter asked us to sacrifice in different areas, but frankly I think that we are unwilling to continue to sacrifice until we see the Federal Government sacrifice, until we see some of those budgets cut, until we see some of those things cut back. I think we can bend our backs to sacrifice but until we see that, we continue to go on and we say why should we do it because they are not doing it.

Now people say to me all the time, gee, if we could just hold wages down or windfall profits down, if we could hold these things down that would help inflation. Let me suggest to you that those are symptoms of inflation, that the worker on the line who goes in and negotiates for the increase in salary, he's not causing inflation. He's a victim of inflation. A corporation who raises its prices is not causing inflation. They are a victim of inflation. It's a precipitator and I think if we realize we can't lay blame on business, we can't lay blame on labor, we can't lay blame here, what we have to recognize is that inflation is precipitated by those basic causes—credit deficit spending, foreign trade deficits, those kinds of things that require that additional money be pumped into the stream and additional borrowing take place. If we can control that and curb it back, only then will we control inflation so this is a State's rights movement. It's a people's movement and I think that it is something that is long overdue and we commend you, Senator Hatch, for what you are doing and we hope that I think, as Kevin suggested, as legislators we have the opportunity of voting on it because you can count on Utah and its ratification of this amendment. Thank you.

Senator HATCH. And a whole host of others in both parties and in the State of Utah who, I think, have your best interests at heart, but if this amendment would go through, it would benefit immediately those on fixed incomes more than anybody else and those are the people who are really getting murdered by inflation, as well as the other problems that are really caused by big government, big government spending and many of the inflation causing factors that Gary and Kevin and Norm have mentioned here today. I particularly commend these legislators for the work that they are doing and the State legislative body because I know that they have your interests at heart. I might mention that we had asked other legislators to appear from both parties but because of conflicts of schedules they were unable to come. We asked the Governor to testify and he has conflicts which has made it impossible for him to testify. Senator Garn was invited to be here and will be out here this evening and he asked me to send you his regards. He's a very effective and strong cosponsor of this amendment, and last, but not least, so you three great legislators realize how serious this is becoming back in Congress, Congressman Skip Bafalis of Florida has a constitutional amendment in the House to which he has 125 cosponsors. He has agreed that this is a fine amendment and he is willing to transfer his support to this amendment and get 125 cosponsors to this amendment and push on to there.

The beauty of this amendment is it has bipartisan support from both Democrats and Republicans. We have to make sure there is enough bipartisan support so it is passed out of the Senate and House of Representatives and submitted to the State. I think that not only would these State legislators vote for it, but State legislators all over the country would support it also. I think they are sick of what is going

67-315 O - 80 - 4

on and it's time to change. Thank you for coming. We are delighted you would take time out of your busy schedules and we really appreciate it.

Our next panel involves business community members and we would like to invite to the dias here Mr. Glenn Lewis who is the representative of the Utah Council of Small Business, Mr. Jack Olson who represents the Utah Taxpayers Association, Mr. Charles Akerlow, a successful businessman here in Salt Lake City, and David L. Tomlinson, chairman, Utah Delegation White House Conference on Small Business. We think that these people are very representative of small business leaders all over this country. We are happy to invite all of you here and we appreciate the efforts that you made for Utah and the efforts you have made to be with us here today. I understand Mr. Akerlow has to leave in just a few minutes so we will call on him first and then we will proceed in any other manner you desire. Do any of you others have time constraints or a problem? If not, then why don't we go to Jack Olson next and then to Mr. Tomlinson and then to Mr. Lewis, so Mr. Akerlow, why don't you go first.

PANEL OF BUSINESS COMMUNITY MEMBERS:

STATEMENTS OF GLENN LEWIS, REPRESENTING THE UTAH COUNCIL OF SMALL BUSINESS; JACK OLSON, REPRESENTING THE UTAH TAXPAYERS ASSOCIATION; AND CHARLES AKERLOW, BUSINESSMAN, SALT LAKE CITY, UTAH

Mr. AKERLOW. Thank you, Senator Hatch. I did prepare some remarks from which I will read from time to time. I appreciate the opportunity of being here. My name is Chuck Akerlow. I'm president and chief executive officer of a company called Akerlow, Thomas & Dyer. We are a full service real estate development corporation in the State of Utah and we are presently involved in the development of real estate properties with a total value of about $50 million in both Utah and Idaho.

I have had a fair degree of activity in the political side of the house. My major in college was public administration and for the first 6 years of my life I spent my efforts in the field of public administration working for Government. I think I have some appreciation for how Government functions and why it spends what it spends and why it ought not to spend what it spends.

Presently I have been a delegate to the White House Conference of Small Business from Utah. I am chairman of the Small Business Council of the Salt Lake Area Chamber of Commerce and maintain some other activities there as well.

I hope I am not offensive to you today, Senator, because I know of your great support for this particular amendment to which I would like to speak in support of. I do have some very critical things to say of what Congress has done to those of us in business and I hope you will not take those personally.

Senator HATCH. I agree with you, so don't worry about that.

Mr. AKERLOW. My business, as you can appreciate, with that kind of a work program, creates hundreds of jobs for contractors and vendors and suppliers and manufacturers and many, many others in

financial institutions and elsewhere each year. The Congress and the administration, Senator Hatch, are frankly ruining my business, and the reason they are ruining my business is because of their inability to deal effectively with a national energy policy and your unwillingness to deal effectively with Federal spending. The result is that rapid inflation has caused the Fed, which has never been very certain about what to do in slowing inflation, to boost the discount rate thus sending interest rates in my business out of sight. My company in the last year has lost hundreds of thousands of dollars because interest rates on mortgages went from about 10 to 10¼ percent at the beginning of last year to today, if you can get a quote at all, to 13 to 14 percent. Over 30 years on several million dollars this four point difference is staggering. It is the difference, Senator, of a project or no project at all.

Worst yet is the number of lenders who have simply walked from their long-term commitments. I've seen that. I've seen colleagues of mine who are in the real estate business who have permanent commitments at 9¼ and 10 percent which were entered into a year ago and have faithfully done the building and have gotten down to closing on those loans only to find that the lender simply walks.

Now there are legal regresses for those sorts of things but who wants to spend 2 years in court to close a loan with a building sitting idle. That's a no-win situation. Yet the lenders today are doing everything they can and I'm involved in a very ticklish negotiation this very day with a lender who has given me 9¼ percent loan that would just love to dump that loan because of the interest rates that they are having to pay on their money which they are going to turn around and loan me. Where is the Congress? You say that these kinds of things are an entrepreneur's risk and certainly they are to a certain degree an entrepreneur's risk, but if the Government is the cause of the problem, why should the entrepreneur suffer a loss, indeed go bankrupt. That's a no-win situation in the economy and it's certainly a no-win situation for employment and for all of us.

The Government's inability to balance its budget and the OPEC price rise is the principal cause for inflation. I heard Albert Kahn in Washington say that of the 13-percent inflation rate last year more than 3 percent was a direct passthrough as a result of the OPEC price rise. If you did not have the OPEC price rises that inflation rates would have been down around 10 percent. A side problem is the recycling.

Senator HATCH. If I could interrupt you, did you recall the President saying at the Small Business Conference in Washington that OPEC was the cause of inflation?

Mr. AKERLOW. Yes.

Senator HATCH. Well, not only did the President say that but G. William Miller came and said the real cause of inflation is the increase in OPEC prices.

Mr. AKERLOW. Well, that isn't the real reason.

Senator HATCH. I might mention that at the end I asked him, just to age you in this area, I said, Mr. Miller, you've indicated that the real cause of inflation and the problems to the administration arise from the increase in OPEC prices. How much are we dependent on foreign oil and he said 47 percent. What is our inflation rate? He said

about 14 percent and I said how much is Germany dependent on foreign oil and gas suppliers and he said 100 percent. I said what is their inflation, about 5 percent. How much is Japan's dependency on foreign oil and gas suppliers and he said 100 percent. What is their inflation rate, about 4.8 percent and I said, well, what you are really doing is hiding the administration's bad economic problem policies behind the OPEC prices and he finally had to admit—he wouldn't admit that that was so but he finally had to admit that it wasn't just OPEC that was pushing things up. It was a whole host of governmental programs that have been testified to here today that were doing it and what Mr. Akerlow has testified because two of these fellows were of the Small Business Conference at the White House and heard the President say that and he's been saying it far too much in my opinion and so has the administration.

Mr. AKERLOW. I do think there is some concern and I have some concern about the OPEC money. For example, I heard the chief economist for Continental General Life Insurance Co. make the claim recently that one of the major problems with inflation is the fact that OPEC is recycling billions of dollars back into our economy from consumers and that is money over which we have paid out for oil which is coming back in and driving the demand and price up and thereby inflating the economy. OPEC countries can have the cake and eat it too at the expense of the Americans, not only at the gas pump but in their paychecks.

I don't think Congress has yet realized the impact of the OPEC consumer spending as well as foreign real estate purchases. A week—literally a week does not go by but what I am offered offshoremen for real estate projects. I expect this trend to continue and if it continues, the United States in a very real sense will wake up one morning and find itself held hostage in a different way, for its buildings and its lands may soon be owned by a few individuals in OPEC countries all because Congress and the administration cannot come to grips with an effective energy policy, so we can be energy self-sufficient and reduce the drain of money from OPEC nations.

I have personally talked with senior executives of several prominent insurance companies, each of whom have told me that they have no longer any confidence in the ability of the Government to control spending or balance its budget and thus have decided to roll with the inflation and boost their rates. Some companies are out of the market altogether. Others are cautiously in it. All are competing with the bonds market and the borrowings of the Federal Government as you already heard.

The Carter administration has already missed its goal of a 5-percent increase of defense spending in real terms but any increased defense spending means a gearup in economy. It all too often is estimated that American businesses will have to raise $90 billion this year. Where will this money come from? With heavy Government spending, it appears that this money will probably come from housing and other mortgages so I expect we in the real estate industry will be hurt even more because of the bonds market and the corporate side of the house will be lending out at 13- and 14-percent rates and in the mortgage market you can't compete with that, and again, all because the Federal Government is unable to control spending.

I personally believe if Congress fails to balance the budget of the Nation and curb its insatiable appetite for more and more spending, we in business will all collapse. I cannot afford to pay exorbitant income taxes and also subsidize Congress and the Government through high interest rates any longer. I can't do both. We are in a growth area in the West. We have the capacity to solve the Nation's energy problems but we can't raise risk or debt capital and pay any return to investors at today's interest rates. You are killing us and the Nation's opportunity for energy self-sufficiency. Senate Joint Resolution 126, which we are here to talk about, is, in my mind, a step in the right direction and my only sadness is that it has not been acted upon and adopted and ratified by all of the States prior to now.

I have practiced a balanced budget in my business and my personal life and I think the Government ought to do the same. If the Government doesn't, the Government and the people in the Government will be the cause of an economic shambles which, I believe, will bring this Republic to its knees and I don't believe any of you or any of your colleagues wish to be remembered in history as the ones who dealt the death blow to American democracy.

Senator HATCH. Thank you. Now, Mr. Jack Olson from the Utah Taxpayer's Association.

Mr. OLSON. Let me start by saying the taxing and borrowing powers of the Federal Government are virtually unlimited. As the realization of this fact has grown among special interest groups and State and local government, they have turned more and more to Washington for assistance to meet their needs and wants. There may be areas where Federal aid is both desirable and required, but the absence of any effective restriction on Federal taxing and borrowing powers has been a key element in the shifting Federal-State-local fiscal relationships since the 1930's and has led to an increasing dominance of the Federal Government over the life of every American.

Rapidly increasing Federal spending has not only affected the Federal system, but has also added heavily to the tax burdens of America's work force. Of equal significance, huge Federal deficits fuel inflation thereby diminishing the value of the dollar and imperiling individual purchasing power and savings patterns.

Thus comes the call for creating a "defense against spending pressures." This clamor is not only justified, but deserves priority consideration.

Let me lay out my case. The national debt has been in balance only twice during the past two decades. In the 20-year period ending with fiscal 1978, the Federal debt increased by $500 billion, or 179 percent to $780 billion. Based on current estimates, the accumulated national debt is projected to approach the $1 trillion mark by fiscal 1982. Unified budget deficits for the past decade have totaled more than $310 billion. Double digit inflation is linked directly to continued deficit financing of Federal programs.

Since spending programs are more popular with the electorate than higher taxes, the continuing preference of the U.S. Government to finance its programs by deficit spending will only be altered by the enactment of procedures that offset existing political pressures to spend and to borrow.

Over the past 20 years, Federal spending, as measured by the unified budget, has increased almost sixfold growing from $92.1 billion in 1960

to an estimated $547.6 billion in 1980. Federal spending has been growing at a faster pace in the 1970's than it did in the previous decade. Of greater significance, Federal spending has been growing at a pace in excess of the rate of inflation. As measured in constant dollars, Federal Government spending increased from $151 billion in 1960 to $286 billion in 1980, an increase of almost 90 percent.

In historical perspective, Federal Government spending did not exceed $100 billion until 1962, the 186th year after the Declaration of Independence, yet, by our 200th national birthday the Federal budget exceeded $366 billion and is projected to reach $615 billion in fiscal 1982.

Different approaches are being espoused to return the Nation to fiscal sanity and prudent levels of expenditures. The most published approach has been the call for a Federal balanced budget constitutional amendment, what we are here talking about today.

This proposal is attractive as an objective but I feel presents several difficulties. Whether or not the Federal budget is balanced depends upon three factors. We must recognize these—expenditures, tax rates, and taxable income. Now the executive and legislative branches control expenditures and tax rates, but not taxable income. Therefore, when income declines, a budget that was projected to be balanced may not be. Under this condition balancing the budget would necessitate that either tax rates be hiked or Federal spending cut.

A balanced budget amendment would also be difficult to administer in the absence of specific language defining what constitutes the Federal budget and what accounting format is to be used. Since any definition would not be free of alternative interpretations, the Federal judiciary could become more involved in rendering fiscal decisions. In the absence of such definitions, "creating accounting" by the Federal Government could easily avoid the intent of the balanced budget amendment.

Our fears and observations relative to this amendment have best been articulated by Dr. Milton Friedman, Nobel Prize economist, who said,

> On the Federal level there have been moves to try to get a Federal constitutional amendment providing for a balanced Federal budget. I think, however, that is a serious mistake. It spends the energies of the right people in the wrong direction. Almost all States have a balanced budget provision but that hasn't kept spending and taxes from going up on the State level. What we need, on the Federal level, as we need it on the State and local level, is not a balanced budget Amendment but an Amendment to limit government spending as a fraction of income. * * * There is an important point that needs to be stressed to those who regard themselves as fiscal conservatives.

Still quoting Dr. Friedman,

> By concentrating on the wrong thing, the deficit, instead of the right thing, total government spending, fiscal conservatives have been the unwitting handmaidens of the big spenders—the true cost of government to the public is not measured by explicit taxes but by government spending.

In conclusion, I would say simply balancing the budget at an ever-climbing level of spending is not enough. The balance must take place at a limited level of expenditures.

What I'm saying, Senator Hatch, in conclusion, is that I am not against this. I think what we really need is both. I think we need

constitutional amendment balancing the budget but we also need to control Federal spending. Thank you.

Senator HATCH. I think that's a good point. Thank you.

I might mention to you that I'm a strong cosponsor of the amendment to balance the budget which was written by Milton Friedman. Unfortunately in 1975 that failed in California because they considered it much to complex with all kinds of economic formulas. However, what most people don't know about this amendment is that it requires the balanced budget that expenditures do not exceed income but it also has a spending limitation build in on a much more simplified basis that the succeeding year's budget cannot spend more than the preceding year's income or expenditures. So what we tried to do in order to get a bipartisan coalition was to try to get the best out of Milton Friedman's that we could possibly get into an amendment and created an amendment that really requires a balanced budget but also does so in the nature of a spending limitation so we don't have the complicated formula that has really in essence made the Milton Friedman constitutional amendment to balance the budget in this amendment. It's a very simple approach but we do have, I think, the best aspect of the amendment in this amendment so I think you could support this because it does basically say the same thing.

Let me give you an illustration. Section 1 says the Congress shall adopt for each year a budget which shall set forth the total receipts and expenditures of the United States. No budget in which expenditures exceed receipts shall be adopted unless three-fifths of each House of Congress approve such budget by a rollcall vote directed solely to that subject. The Congress shall not pass and the President shall not sign any appropriation bill which would cause the total expenditures for any year to exceed the expenditures on the budget for such year.

Then section 2 says the receipts in any year shall not exceed as a proportion of the national income that collected in accordance with this section in the prior year unless a bill directed solely at improving a specific increase of such proportion by each House of Congress by a rollcall vote and such bill has become law, so it does adopt the theory of the Friedman amendment but not the complicated formula. I would certainly support Stone-Hines and I was a great supporter of it but it's just that we could not get the support for it bipartisan in the committee itself where we've got to have it where we can get it out on the floor.

By the way, for those of you who would like some of the complicated formula of Stone-Hines, I do like the formulation. If we could get the balanced budget amendment out to the floor then Stone and Hines and a number of us may be able to try to add their formulation into this, but the key is to get a balanced budget amendment out of the committee and then we can try an amendment on the floor. That's why this balanced budget is so crucial because even though it is, I think, a very adequate and very good amendment and I think probably superior to Stone-Hines in the overall analysis, once we get it out on the floor we can change it. Keep in mind the other side can change it, too. They can neutralize it down to nothing if they want to so what we've got to do is make sure that doesn't happen.

I appreciate your testimony here today. As always I think you do a tremendous job with our Utah Taxpayers Association and at this point let's listen to Mr. David L. Tomlinson, who is the chairman of the Utah delegation to the White House Conference on Small Business, and we would certainly be interested in what your have to say, Dave, here today.

STATEMENT OF DAVID L. TOMLINSON, CHAIRMAN, UTAH DELEGATION TO THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Mr. TOMLINSON. Mr. Chairman, it's a pleasure for me to be here today. I am president of Amwest, a Salt Lake City-based distribution firm. I'm also president of the Utah Council of Small Business and a member of the Action Council of the National Federation of Independent Business. More importantly, I am a concerned small businessman. As I indicated, I served as 1 of the over 2,000 delegates to the White House Conference on Small Business. It was recently organized by the Carter administration by a mandate by Congress.

Delegates were selected by their fellow small business people in 57 meetings throughout each State in the Union involving over 30,000 small business people and among the recommendations of the Conference—in fact, one of its priority recommendations was the need for a balanced Federal budget.

I had the opportunity of moderating the inflation department at both the regional caucus and at the national conference at Washington, both of which departments generated the recommendation dealing with the balanced Federal budget and the recommendation placed among the top three priorities of the concerns of small business people throughout the United States.

The strong feeling at the conference was that a balanced budget was needed immediately, not at some distant point in the future. I'm therefore pleased to see that Congress that has been debating this matter for many decades is finally on the verge of doing something. Senator Hatch, I believe we would like to congratulate you for your cosponsorship of this legislation and we also congratulate the Subcommittee on the Constitution for getting this resolution to the full Senate Judiciary Committee and we do recognize that this is the first time a congressional panel has ever acted upon legislation of this kind, so your committee is to be strongly commended.

Senator HATCH. Thank you, I'll pass that on to everybody.

Mr. TOMLINSON. There are two concerns that are foremost in the minds of Utah small business people and I suspect business peop throughout the country—high inflation and high taxes. Both in my opinion are the direct result of the irresponsible course that has been pursued by the National Government for too many years. Both are caused by the ceaseless deficit spending that takes place in Washington.

The American people have never bought the notion sold to them by progressive thinkers in Washington that deficits are good things. They have never bought the notion that a healthy society can spend and spend without having to pay for that spending in some way and they have never bought the notion that such spending will not ultimately have to be paid for by somebody.

Today it's paid by each of us as we go to the supermarket, as we eek to purchase a home, seek to support our family, as we seek to lan for our futures. Inflation, a direct fruit of deficit spending, is reaking havoc with the American dream. I strongly support Senate oint Resolution 126 and it is also supported by the National Federa- on of Independent Business, the largest small business organization n the country, as well as other small business organizations.

Senate Joint Resolution 126 more than anything else in my opinion ould make our Congress more honest in the area of budget policy. more honest policy means a sounder policy.

First, the amendment would require Congress and the President to alance the Federal budget each year. Congress could not vote for pending programs unless it were willing to pay for those programs. nstead of thinking only about what spending groups wanted in Wash- ngton, they would also have to consider what earning groups wanted. hey would no longer be able to bilk the earners and workers of this ountry by leading them to believe that no one will have to pay for ew spending. In the event that a large number of Senators and Congressmen in an emergency of some sort requires a deficit, Senate oint Resolution 126 permits that, although it does require each lember to stand up and be counted on that point.

Second, the amendment ends the charade by which tens of millions f Americans pay more taxes each year simply because Congress hooses to do nothing. There is an increasing number of persons coming o discover inflation pushes each taxpayer into high tax levels whether r not they are earning more tax dollars. This would no longer be the ase. Under Senate Joint Resolution 126, taxes could continue to ncrease, it is true, but only if Congress stood up and voted to increase hem. That is, taxes would not increase as they presently do by Con- ress doing nothing. Instead, Congress would have to risk the wrath f the public and do it in the open.

Thus, this amendment seems to me to be basically an honesty mendment. The people of this country, if nothing else, would be ble to identify more clearly those Representatives in Washington who are sending all of us to the cleaners. I suspect that the political ewards for these Representatives would be exactly what they deserve. Our budget process could be far more responsive to the citizens of. his country than it is today.

Again, thank you for this opportunity.

Senator HATCH. I really enjoyed the testimony from our business eaders in Utah, especially small business leaders. I think that the ogent statement there was identify the people who have been sending ll of us to the cleaners.

I just want you to know there are a number of Congressmen and enators back there who don't want that to happen but we are in a inority, but during an election year if we can get this out of the udiciary Committee and on the floor of the Senate, I think you are oing to see just exactly what happens. We have to have 67 votes to ass it and that's one reason why this amendment would be a coali- ion supports amendment but it's, as I say, this is a historic first and t has taken some real hard work to do it. It was still 5 to 2, 2 in the udiciary Committee who would not support this, the chairman imself. As I said, I'm the ranking minority member but the chairman,

Birch Bayh, would not support it, neither would Howard Metzenbaum, and they will not support it in major committee and neither will the other chairman, full chairman of the Judiciary Committee, Senator Kennedy. So we will just have to see what happens, but we do have a goodly majority willing to support that now and maybe we could get that extra vote that is essential.

Let's now go to our last witness from our business community, Mr. Glenn Lewis, who does a tremendous job with the Utah Council of Small Business.

STATEMENT OF GLENN LEWIS, UTAH COUNCIL OF SMALL BUSINESS

Mr. LEWIS. Thank you, Senator. I might explain that the Utah Council of Small Business is a private business association made up of small business owners throughout the State of Utah and I guess we could describe our philosophy similar to what Mr. Akerlow mentioned. He's gone now but the other day he was indicating that the White House Conference delegates were commended for being the only group who had gone to Washington asking for less Government instead of more Government and this, I would have to say, would be the philosophy of the Utah Council of Small Business.

We also might mention that small businesses are very heavily impacted by Government policies, as far as spending and taxation. During the last decade there were approximately 12 million jobs created in this country, 3 million by government, 9 million by the private sector and of those 9 million they were all created by the small business. So small business is the job maker of America and when we have the kind of economic policy that we have had, we suffer greatly.

We feel that the day of reckoning has to come and this particular piece of legislation is perhaps a way of coming to grips with the problem before it is forced on us by some other perhaps more severe measure.

When we talk about being taken to the cleaners, we know exactly what that means because here on the State level we have had an experience this past month when we were very actively involved in promoting a constitutional amendment for limitation of spending on the State level and we got taken to the cleaners by the public sector, by those who can benefit most perhaps from increased spending and more bad economic policy. So we have had some personal experience with it and we feel that perhaps this bill is very similar to the constitutional amendment that was proposed on the State level.

It's a moderate proposal. It's a compromise proposal. It's one that is a workable proposal. It doesn't have everything that we wanted in it but perhaps it's the only way that we can get something moving and something going and this was very similar to the type of legislation that we were sponsoring here at the State level.

We do have a serious problem. I just want to quote from an 18th century British historian by the name of Alexander Tyler who said, "Democracy cannot exist as a permanent form of government. It can only exist until the citizens discover that they can vote themselves

largess from the public treasury. From that moment forward, the citizens will always vote for the candidate promising the most from the public treasury until a democracy will ultimately collapse in fiscal chaos, always followed by a dictatorship," and this is why I say the day of reckoning is coming. Unless we can put a stop to this trend, that is exactly what is going to happen in this country. This is the direction we have been moving in the last several years.

Now in direct response to the bill, let me say this. We support Senate Joint Resolution 126, the amendment that is before the Senate Judiciary Committee. We join other national small business organizations that have given their support to this measure, as well as the two Senators from our State. This resolution will not immediately remedy each of the economic problems that plague our country, but it will free the Congress from much of the influence that the spending interests have in Washington. The taxpayer will be placed on a more equal plane with the tax users in their fight for the dollars earned through the sweat of the taxpayers.

Section 1 of Senate Joint Resolution 126 will do nothing more than what was traditional in this country until a few years ago. It will insure that the Federal Government balance its budget under normal circumstances. It will insure that the Federal Government not, as a general rule, spend dollars that it does not have in treasury. There is flexibility provided, however, since specific deficits can always be voted whenever 60 percent of each House go along. Deficit spending, however, will become the exception rather than the rule that it is today.

A balanced budget, however, is not enough. A balanced budget by itself will contribute immensely toward reducing inflation but it will not by itself work to reduce the tax and spending burden upon the American people.

That is why section 2 of Senate Joint Resolution 126 is so important. Section 2 is deceptively simple, but is likely to have an extremely important effect. It says only that taxes cannot be increased as a share of the economy unless Congress is willing to stand up and do that. How can anyone argue with that? How can anyone argue that Senators and Congressmen should have to be honest and accountable for tax increases?

We don't believe, however, that Congress is likely to do this under normal circumstances. Congress loves the way that inflation places people into higher and higher tax brackets because they reap more tax dollars without ever having to vote for them. They are not, and I do not believe that they will be, willing to stand up and be counted as favoring tax increases.

If that is true, then Senate Joint Resolution 126 not only gives us a balanced budget, but it gives us a tax limitation. And because section 1 prevents spending from increasing faster than taxing, there is also a spending limitation. Although it appears to be an extremely simple amendment, it is a combination balanced budget, tax limitation, and spending limitation.

Senator, I thank you and the committee very much for giving us the opportunity to participate in this extremely important decision. It is

my understanding that an extremely close vote is expected in the committee sometime next month. The Utah Council of Small Business and the rest of the working sector of this country wish you the best of luck.

Senator HATCH. Thank you so much. We have been deeply honored to have these members of the business and tax communities here in Utah testify and as usual their testimony has been just excellent.

I might just read something out of Periscope in Newsweek, February 5, 1980. It's entitled, "Congress Is Anti-spending Measures."

Both Houses of Congress are pushing hard to impose spending limits on the Federal Government. Representative James R. Jones—

who, by the way, is my cochairman of the public interest foundation called Citizens United for America. He is the Democrat from Oklahoma who is the leading tax limitation Member of Congress and he's great young Congressman on the Democratic side of the floor.

Representative James R. Jones, an Oklahoma Democrat, has informed the House leadership that he has the votes to block passage of a vital budget resolution unless his long-stalled antispending bill comes up for a vote first. The Jones bill, designed to take effect in 1982, would limit Federal spending to 21.5 percent of the gross national product, about 1 percent less than projected spending in Jimmy Carter's fiscal 1981 budget. He's jumping to 21.7. Meanwhile, the Senate Judiciary Committee despite Chairman Edward M. Kennedy's opposition is likely to approve within weeks a constitutional amendment requiring that the Government spend more than it collects. This amendment would have to pass the full Senate and House and be ratified by the States.

So, as you can see, it's starting to get some consideration by the media and I think as we continue to fight this battle you will find everybody in America is going to get excited about it, especially if we could get it out of the Senate Judiciary Committee, and we are one vote short from doing that. It's very important that everybody get involved who believes in it. Those that don't believe in it write and say why.

Our next panel are members from the academic community. They will be Dr. Robert Crawford, Dr. Jefferson Fordham, and Dr. Jewell J. Rasmussen. I think it's going to be a tremendously stimulating panel. Some of these leaders will be against this amendment. We'll have some questions for them. I hope all of you will stay but I would like to take a 5-minute recess. I hope you will all stay. It should be even more interesting.

[A short recess was taken.]

Senator HATCH. We will now call to order the U.S. Senate Judiciary Committee hearings on Senate Joint Resolution 126, proposed constitutional amendment to balance the budget.

We are now happy to have as members of our third panel Dr. Robert Crawford, associate professor of economics, Brigham Young University, Dr. Jefferson Fordham, professor of law at the University of Utah, and Dr. Timothy Smeeding, assistant professor of economics speaking for Jewell J. Rasmussen from the University of Utah. I am particularly delighted to welcome the three outstanding professionals in their fields to testify to us today on the record concerning their viewpoints with regard to this particular balanced budget amendment or anything else they care to say along these lines.

Why don't we begin with Dr. Jefferson Fordham, Dr. Smeeding, and then wind up with Dr. Robert Crawford.

PANEL OF ACADEMICIANS:

STATEMENTS OF DR. ROBERT CRAWFORD, ASSOCIATE PROFESSOR OF ECONOMICS, BRIGHAM YOUNG UNIVERSITY; DR. JEFFERSON FORDHAM, PROFESSOR OF LAW, UNIVERSITY OF UTAH; AND DR. TIMOTHY MEEDING, ASSISTANT PROFESSOR OF ECONOMICS SPEAKING FOR JEWELL J. RASMUSSEN, THE UNIVERSITY OF UTAH

Dr. FORDHAM. Thank you, Mr. Chairman. Let me say at the outset that my position about this is one in opposition to the constitutional amendment. Along the lines that have been discussed, I would like to present my reasons for this. At the outset, I do wish to point out that while most of you people—perhaps all of you—don't believe in extravagance, lack of prudence in one's home and personal life or in public life but the situation at the public level is extremely complex. With that in mind let me at this point refer to my formal statement.

Let me speak first in general psychological and political terms. In my perspective, proposals for limitation of Federal revenue raising and spending power are quite at odds with the robust American spirit of self-reliance and confidence in our institutions. For my part, I believe in representative government and I would not fetter our national representatives in making the requisite policy decisions as to finance. In this perspective, I would simply put aside proposals such as Senate Joint Resolution 126, 96th Congress, 1st session. I eschew a negative attitude. What is needed is an affirmative outlook—a commitment to making representative government work at the national level. The proponents of such constitutional proposals as Senate Joint Resolution 126 make me think of a strong man who is so fearful of hurting himself that he has his hands tied behind his back.

It is appropriate to note that a balanced budget policy for State and local governments is prudent, but even that does not have to be mandated by express constitutional provisions. The posture of the Congress, it must be stressed, is very, very different from that of a State legislature. It is true that the Congress is a legislative institution of delegated powers, while the reserved powers are vested in the State legislatures, but the fact that congressional powers are broad and are exercised with a reach that covers the totality of American society—a complex, highly interdependent national community—renders the congressional posture unique.

The proposition 13 fever that has spread beyond California to other parts of the United States is to me at odds with the American spirit.

Senator HATCH. I would like to ask the audience to refrain from any remonstrances. We are a country where dissent is very, very important and especially in the committee hearing processes because if we don't have alternative points of view, we cannot refine these problems. Let me just give you this background. Dr. Fordham is one of the preeminent constitutional authorities in the country and that's one reason why we have asked him to testify—knowing that he would be against this amendment. We want to have this testimony so we can have both sides. I would like to ask the audience here today, and I'm pleased that many of you are in favor of this amendment, but I

would like to ask you to show deference to Dr. Fordham and these other two top Ph. D.'s in economics so that we can listen carefully to what they have to say. If it doesn't change your mind, that would please me, but on the other hand if it does, then that's the way our process works and that's why it's a great process and I have a great respect for all three of these gentlemen and although I disagree with Dr. Fordham, I still think that it's very important we have his testimony. Please, I understand your feelings and I understand how deeply people feel on this issue and I'm not criticizing. I'm just saying let's show deference to these great people who have taken time out and put very serious time into presenting these papers. Let's show great deference to them and listen to what they have to say. Dr. Fordham, thank you.

Dr. FORDHAM. I am not particularly offended. You are entitled to your views and I don't care—I don't mind at all if you vocalize.

Senator HATCH. We attorneys get kind of calloused.

Dr. FORDHAM. I have mine and I believe profoundly in them and I intend to express them and I repeat, the observation that proposition 13 fever has spread beyond California to other parts of the United States is in opposition to the American spirit. I note its infection in Senate Joint Resolution 126. It proclaims distrust of representative government and in a wooden fashion would severely limit the range of choice of representative government in providing the funds necessary to finance needed governmental services.

Such is the interdependence of the human condition in contemporary society that there is no escaping extensive dependence upon government at all levels to meet individual and social needs. In a word, whether one likes it or not, we are all in it together and our commitment is, or should be, to assure through organized society at least a minimal response to the ills and hazards that all of us are heirs to.

All this being true, it would be folly to hamper the National Government in the exercise of fiscal powers directed to assurance of the meeting of basic human needs.

What we need in the Congress is not regressive processes but enlightened performance of legislative functions by able men and women whose devotion to the public interest rises above the claims of party or any special interests. The legislative article of the Constitution is adequate to the needs of our society. Let us give it effect.

Of course, there are interdependencies in the Federal system. Congress is committed to general revenue sharing with State and general-function local governments—a multibillion-dollar program that would be a likely area for budget cutting were such action undertaken. It is vulnerable to action like the resolution which we are considering today.

As others have observed, the Constitution is not designed to embrace any particular economic theory. The way to act upon budgetary policies is by resort to the legislative process within the constitutional framework. Such policies should, in short, be left to the political branches. But were such an amendment as Senate Joint Resolution 126 adopted, it is likely that we would see resort to the courts to obtain review of budgetmaking actions. This, if jurisdiction were entertained by the courts, would be at odds with the principle of separation of powers as we have known it and be an obstacle to smooth and effective operation of the budgetary system.

The override provisions of Senate Joint Resolution 126 and similar proposals are very dubious innovations. Why should we not adhere to the principle of majority rule as we do with respect even to a declaration of war? Override provisions operate to give controlling effect to the votes in excess of a simple majority.

Senate Joint Resolution 126 has an extraordinary provision to the effect that its provisions shall be construed in accordance with their meanings on the date on which this article was submitted to the States for ratification. This may appear superficially to be no worse than innocuous, but basically it bespeaks a rigid specificity, quite at odds with American constitutionalism, since it does not involve large concepts or principles that permit interpretation responsive to changing conditions and attitudes as has been characteristic of our national experience. It is a far cry from Chief Justice Marshall's perception of the Constitution as embodying principles that would endure for the ages.

In sum, the power of Congress to adopt an unbalanced budget is a profoundly important—if not critical—instrument of effective federalism. We should nurture responsible exercise of the power by the political branches but not make the grave mistake of throttling resort to it.

I am concerned with central ideas rather than draftsmanship but I will make one drafting point about section 1 of Senate Joint Resolution 126. The section would forbid appropriation measures which would cause expenditures in a given year to exceed expenditures in the budget for the year.

Now what is wrong with that? Well, this refers to expenditures rather than receipts and, thus, would not prevent outlay in excess of actual receipts since such receipts might prove to be less than the expenditures provided for in the budget.

Voters who favor conservative budgetary policies and practices should express their views at the polls. Of course, they should. I apprehend that it will be said that the political process is largely affected by the fact that all sorts of groups in society have lively in erest in continuing this or that program that is beneficial to them. Of course they do. There is realism in this, just as there is in recognizing that there are differences of view as to spending for defense. I say simply that we should not respond by placing limitations in the Constitution but should try very hard to make representative government work by electing representatives who place the general welfare above special interests.

This, I remind you, is the birthday of George Washington, the great leader who presided over the Constitutional Convention in 1787. Does anyone here suppose that he could have been infected with proposition 13 thinking?

Senator HATCH. Are you through? Next is Professor Smeeding and then we will have some questions for the experts on this panel.

Dr. SMEEDING. Thank you, Senator Hatch. Let me just begin by making a few opening statements. Then I will try to get into a little more detail in the short period of time that we have.

I am speaking on behalf of Jewell Rasmussen, my senior colleague, and myself because Jewell isn't feeling well today.

The first point we want to make today is that we are not going to discuss or defend any specific level of Government expenditures. The

second point is that we are not opposed to fiscal constraints in principle. Rather our concern is, in fact, how to get there, not whether to get there.

We don't think that Senate Joint Resolution 126 is the way to get there and we will try and explain why. We are also, along with Dr. Fordham, concerned particularly with the need for a constitutional amendment as opposed to legislative controls, and also with how a constitutional amendment might bind the economy.

Finally, our comments are going to emphasize that we are impressed with the current budgetary limitation procedures as set forth in the Congressional Budget Act of 1974 and, in fact, favor strengthening those.

Now, Mr. Chairman, we are in sympathy with the objective of this proposed amendment to promote fiscal responsibility and improve the budgetary process, but we oppose the constitutional amendment which would mandate limited receipts or expenditures of the Federal Government, whatever that amount is. We fully acknowledge the budgeting process has exhibited weaknesses in the past and a good case can be made for strengthening controls over the Federal budget. But the risk of encountering problems by inventing any set of specific requirements in the Constitution is very great, as Professor Fordham has pointed out.

We believe that the problems created by this constitutional amendment will be far greater than any assumed benefits to be derived from such a plan. In fact, if further controls over the Federal budgetary process are necessary, we believe that these changes should take place within Federal law, specifically the Congress Budget and Impounded Control Act of 1974. For the first time, we formally involved the Congress in looking at the entire budget by requiring the submission of a budget plan which is held up to scrutiny by the press and by others.

One of our fears is that Senate Joint Resolution 126 in effect obliviates the stabilization policy. We are not so ignorant or blind to think that they are not working out as well as they did in the 1960's. We are not fools. However, we doubt very much if you could get any—on second thought you could find a few economists who would say anything. But, I doubt if we could find a majority of economists that would agree that we should have the type of procyclical budget which in effect would come about with Senate Joint Resolution 126.

Let me explain one of the first problems with the resolution. Here we sit January 1, 1980. What we have to do is forecast the way the economy is going to come out 18 months from now, October 1981. So somehow, somebody must forecast this outcome. In this case we must argue over forecasts. The important thing is now, whose estimates of revenues and receipts are we going to rely on. Finally, we agree on some estimates. But those estimates have never proven true. Why? Because Federal budget receipts and expenditures are in economists' terms endogenous. They are determined within the economy. If the economy starts to drag, what happens? Tax receipts fall, people get laid off, people go on unemployment compensation, expenditures go up. People use food stamps, expenditures go up. Given a 1-percent drop in forecast gross national product, we have $8 billion worth of deficit; a 1-percent increase in the unemployment, $15 billion deficit.

Now after the fact, what do we find when we get to the end of the next year, October 1981? We find that the economy has slowed down

and we have a deficit. We are forced, according to the principles of this amendment if we are going to comply with them, to raise taxes or to somehow cut expenditures to balance the budget. What that would do—either of those—is to pull more purchasing power out of the economy and push the economy further along the way it's been going, plus it would counteract any automatic or built-in stabilizers which are the forces which produced a deficit in the first place. When the economy slows down, a deficit automatically comes about because the Federal Government is spending more than it taxes. This amendment would reinforce, not work against, these tendencies.

Now let me say just a few things—I don't want to get into a lot of detail about the specifics of the amendment; our statement covers the fine points. But let me just say that every analyst I've read, William Stubblebine, Alan Greenspan, and James Kilpatrick included, have expressed their frustration with constitutional budget amendments such as this. In other words, they don't think they are going to work. Well, why not?

First of all, you have a lot of language to define. What is national income? Is that "gross national product" or is that "national income" as officially defined. Second, the amendment states that if the Government must rebate taxes—due to an unforeseen budget surplus—they will go to persons but not to corporations. If you read the paper, you found on Wednesday that the Congress had such a big argument on whether the oil rebates should go to persons or corporations that they finally wiped them both out of the act by putting the decision off until a later date.

Senator HATCH. There is nothing in this amendment that says that, that says personal rebates. You are looking at the Friedman amendment. The Friedman amendment was so complex that we couldn't get the support to bring it out so we did a much more simple amendment which basically ends the bias toward spending and created a bias against more Federal——

Dr. SMEEDING. I am speaking, sir, of what, in fact, is stated on the copy of Senate Joint Resolution 126 that I have. I didn't receive a later copy of this.

Senator HATCH. You may have an earlier draft. Let me just hand you a present draft.

Dr. SMEEDING. I would like one of those, thank you. Another of our problems is the following. I think that this resolution avoids the explicit question of how to balance the Federal budget. It doesn't say whether we should raise taxes, which I doubt very much that proponents of the bill feel is necessary, or whether we should cut expenditures. For instance, I think the most expendable expenditure category is aid to State and local governments, which in the aggregate had budget surpluses of $20 to $30 billion over the past few years.

You can imagine the response if we don't have any more State and local revenue sharing—and while in this State I can imagine a different response, in the other 48 or 49 I'm afraid they would try to raise taxes to balance the budget and, therefore, defeat the purpose of this amendment to begin with.

We don't have much time, but our general point is a simple one. If you try to box people in without instilling in Congressmen the will and the desire to limit expenditures and take a good hard look at

87-315 O - 80 - 5

budgeting, it's not going to work. They are going to try to end-run it and then end-run it and end-run it again. Every analyst that I've read on this issue claims exactly the same thing. There are so many different definitions and terms and ways to get around things that the amendment will have little effect. You cannot, in fact, by putting a box around the congressional process, force people to behave the way you want them to. If there is no will, there is no way.

For instance, proposition 13, said you can't have property taxes. Fine. They use user charges instead, which means you pay for garbage by the barrel instead of paying property tax. Further, user charges aren't deductible, if you itemize your Federal tax return, whereas the taxes are.

We believe, in conclusion, that by strengthening the congressional budget amendment of 1974, for example, by adding items which have been proposed such as budget limitations set forth for the 2 following years as well as the next fiscal year, so that we get ahold of what we call uncontrollable outlays before they get out of control, that we are going to end up inducing, nudging, and pushing Congress to where we want to go. I just don't think, nor does Professor Rasmussen, that this particular proposition is going to work the way you hope it will.

Thank you.

Senator HATCH. Thank you. Dr. Crawford, we are happy to have you with us today and we are very interested in your viewpoint as well.

Dr. CRAWFORD. Thank you, Senator Hatch. Let me preface my prepared remarks with a few comments on testimony to this point. It seems previous witnesses previous to this panel, have all talked as if Government is something out there doing things to us that we don't want and yet I think that that's not the case. The Government is doing exactly what we want and now that we realize what we want in piecemeal, we are not liking it. Any Congressman that didn't respond to what he is hearing is simply not a Congressman.

Senator HATCH. That is unless he can find ways of deceiving people.

Dr. CRAWFORD. People are not stupid. It's hard to deceive. The testimony of previous witnesses has revealed an open self-interest which I have appreciated, plus a mild ignorance of basic economics which I will sympathize with. We are all mildly ignorant of economics, even economists.

The third comment is the majority of the rich people in this country are small businessmen and I don't know why particularly there should be any bias in favor of their problem more than anyone else's. The fourth preliminary comment is that objecting to this amendment because it's procyclicals are in error.

Let me proceed to my formal remarks and hopefully they won't take too long.

Everyone responds to incentives. At present, the incentive to which all politicians respond is the incentive to spend. No politician has been successful at limiting spending by himself and no "limited spending" coalition of politicians has yet formed. Those few who have been elected on the promise of limiting spending have been ineffectual. The political incentives require elected representatives to continually do more for their constituents. Incumbents run on their record, what they

have done for their constituents. Most of the things they have done that count are positively correlated with expenditures. Challengers run because incumbents haven't done enough. The challenger promises to do more. The promises may not overtly be promises to spend more when elected—as evidence, see the LTV ad in yesterday's Wall Street Journal giving you views of aspiring Presidential candidates—but once elected, if they seek to establish a track record, the record will show significant expenditures. The flaw is not in the characters of elected representatives. With few exceptions, elected government officials are as highly principled as any of their constituents. The flaw is in the system which makes it extremely difficult for any elected representative to repeat himself in office unless he becomes a big spender, and ever worse, a big spender who can make it appear as though taxpayers do not have to pay. Only a constitutional rule can change the incentive structure.

Now the specific advantage of this proposed amendment establishing a rule on fiscal behavior, planned fiscal behavior I want to talk about, is the information it provides to voters in the political market. Increasing the information available to agents participating in economic markets improves the efficiency of those markets and increases the welfare of participating agents. Fewer mistakes are made, better choices are made. Many major decisions are made on the basis of expectations about the future and better information improves the quality of expectations, resulting in fewer undesirable surprises. An amendment limiting tax receipts as a proportion of national income and requiring a balance budget will significantly increase the information available to participants in the political market, improving that market. Given some experience, voters can correlate the state of the economy with specific tax receipt/national income ratios. Every political candidate's philosophical views on government spending can then be conveniently expressed as a simple percent and evaluation of those views will be less complicated. Also, once elected, any change in a candidate's views will be difficult to disguise. The debate and vote on changes in the limitations established by the amendment will be well publicised. Hence, the meaning of a given "yea" or "nay" is understood. Every candidate's views on the appropriate proportion of national income to be taxed and their voting record on changing that ratio or the balance of the budget increases information available to voters. Thus, it improves the political market.

The importance of expectations and the way information is used to form expectations is fundamental to the performance of economic markets. This connection, given the rubric rational expectations in economic theory, has generated an important new appraisal of discretionary economic policy. That appraisal raises serious questions concerning the effectiveness of discretionary stabilization policy.

Keynes' policies—I might add at this point Keynes would be embarrassed to call the current policy Keynesian. It would certainly not be what he would recommend, had he been here. The problem with the current stabilization policy is that it ignores information and expectations on the part of market participants.

My support for an amendment limiting tax receipts and requiring a balanced budget follows from my belief that it will increase the flow

of useful information to voters as it reduces the incentives of elected officials to create inflation. An effective amendment will result in a level of tax receipts explicitly and directly determined by elected representatives who can be knowingly judged by those who pay the taxes.

Let me deviate from my prepared text for a moment to say that the budget—that this amendment does not promise a balanced actual budget. It just promises a balanced planned budget. The actual budget will be different. The balance will differ as the state of the economy differs as previous testimony has indicated, but that does not make the planned budget a procyclical.

To most, inflation remains the one mythical dragon that St. George has always promised to slay but never has. In every recent Presidential election campaign, the St. Georges have trampled the land making similar promises only because voters believe they just might deliver some day—but they never have. So far, a majority of voters have not objected to this consistent failure because most voters have benefited from inflation. I, and most of you at this hearing, have benefited from inflation. Our real wealth has increased. Most of us have better homes than we would otherwise have had given the inflation of the last 10 years. We have benefited to this point because the inflation has primarily been unanticipated and economists have long known that unanticipated inflation always results in a wealth transfer from net monetary creditors to monetary debtors and most of us are monetary debtors and we benefit from inflation. Let me point out that the Government is the biggest monetary debtor in the Nation and it benefits immensely from inflation. I have been a net monetary debtor all my married life, 14 years, and I have benefited from it those 14 years. The problem is, I tell my students at my classes only half kiddingly, if you want to benefit, get as big a debt as you can finance and then pray for inflation.

Well, they laugh, but I'm serious. The problem is, when inflation ceases to be viewed as an aberration and it becomes anticipated, then the wealth transfer stops.

The small businessman who talked about real estate on the previous panel said the exact same thing now—that interest rates reflect the anticipated rate of inflation. It's very expensive, but 10 years prior to that when his wealth was going up because of inflation but interest rates weren't because they were controlled, he didn't complain. I suspect that it was not good management that brought those profits in.

The lower gains that we all receive from anticipated inflation lowers our wealth. The time has arrived that inflation is anticipated by and large by everyone in society, so there is no wealth transfer left in inflation.

Now we all begin to suffer and this real suffering will generate an incentive, if we are not careful, to lead us to reject the American political system, freedom and democracy, not violently but gradually and inadvertently.

I think the OPEC prices have received a lot of condemnation at this hearing as part of inflation. Senator Hatch has correctly stated that they are not the cause of inflation. They certainly are a cause of

a reduction in aggregate supply and that created some minor increase in prices, but the problem of oil prices is a separate problem and I, for one, am in favor of the high prices because oil prices are determined basically on the expectation of future demands and future supply. Again, the substitutes that we all thought would come for oil in the decade of the 1980's and 1990's, the existing stocks have to be stretched over an additional decade. Less has to be used now. The only way that we will willingly use less now is if the price goes up. We all support free enterprise as long as it's for us, but when the Arabs take advantage of free enterprise, we object. Oil prices are not that high because there is a greedy cartel. They are that high because the market dictates that price for oil which should, in fact, grow at the rate of inflation plus 2 percent on average every year from now.

It's a shame that so much useless rhetoric has been wasted on oil. Let me return to my prepared remarks and comment specifically on Senate Joint Resolution 126.

As I understood it, there are three essential provisions—planned expenditures equal planned tax receipts unless voted otherwise; two, actual expenditures equal planned expenditures unless specific vote otherwise; and three, planned tax receipts in any given year cannot exceed the proportion of previous year unless a specific vote. Spending can be anything that the Congress wants it to be. It just has to be up front. They have to vote on it up front. Essentially the amendment is a limitation on spending. It's not a balanced budget amendment. The balanced planned budget makes the amendment work. It does not eliminate actual deficits. It just eliminates planned deficits.

The problems of forecasting tax receipts and expenditures that my colleagues have referred to is as big a problem with the procyclical as it is for a planned balance. That problem is not an objection to this amendment.

Since the planned budget is required to be balanced and not the actual budget unless otherwise voted, the budget will have mild automatic countercyclical features. If the economy falters then tax receipts will go down but expenditures will stay the same, and that will be mildly stimulating and have the beneficial effects that we would want.

You look at economic theory as it has been applied in the past and there is nothing in the two decades since the 1960's that indicates any countercyclical discretionary policy has been effected.

In fact, the recent research in economics indicates that discretionary countercyclical policy only works if it's unanticipated and it's difficult to see how a planned budget deficit can be unanticipated. If it's anticipated, planned discretionary countercyclical will be either ineffective or else destabilizing. The current amendment does not rule out discretionary countercyclical budgets. It just rules out such budgets that cannot receive support through a specific vote in the Congress. Thus, the main strength of the amendment is the requirement of explicit action on the part of elected representatives thus increasing the information available to voters. The Congress will always do what it wants but will be required to do it openly and directly. That doesn't mean we should object to the amendment to the Constitution.

The first two sections of the amendment mean the budget becomes a legitimate constraint on the spending desires of individual interests. The current budget process is just the accumulation of desired special interest spending. It acts as no restraint on those. Essentially what this amendment is saying is that we will first determine the size of the pie and the special interests will argue how it's going to be split. Currently special interests argue what size of the pie will be and where it will go, and that's the main problem. There is no limit on what the size of the pie will be.

I think this amendment in general is in accordance with the general language of the constitutional provision. It is not a specific rule that hamstrings the democratic process in any way. It basically just opens up the amount of information available to the voters so they can openly judge what the Congress is doing. Then if Congress does it and they get support from the voters, they can't complain.

For this reason I strongly support the amendment. The escape clause means the budget will not hamstring the Nation in times of genuine emergency. Having such an amendment as Senate Joint Resolution 120 improves the democratic budget process without dictating the result of such a process. It will have a positive effect on the welfare of the Nation. Thank you, Senator Hatch.

Senator HATCH. Thank you. Let me say that all three of these opinions today have been interesting to us, and I might say that we have had the top economists in the world testify on this amendment before our committee, or should I say on a balanced budget amendment before our committee, and for those who are pro as Dr. Crawford has been, I just want to throw something out. You have raised some of the more interesting points on this amendment of all of the economists who have appeared in frout of us and they have been the top experts in the world on this matter.

I might also add that for our two panelists who have been basically against it in approach toward solving our budgetary problems in our society, both of you have added very provocative points that have been quite interesting.

Let me begin with Dr. Fordham, though. Professor Fordham, would it be your opinion that there is no fundamental bias within our political system on behalf of higher levels of spending or that even if such bias exists, it can be remedied by nonconstitutional means?

Dr. FORDHAM. As to the existence of the bias, I think that one must acknowledge that there is something of that sort that works toward spending.

Senator HATCH. Toward spending?

Dr. FORDHAM. Yes; I'm glad to acknowledge that that's true.

Senator HATCH. Then the second part of the question is: Is it your opinion that this can be remedied on a nonconstitutional basis and reasonably? Is there a reasonable likelihood that it will be taken into consideration that for 44 of the last 51 years Congress has not remedied it?

Dr. FORDHAM. I would say first in respect to that, Senator, that the content of a bias here needs to be examined. There is a tendency, of course, toward larger spending where people expecting more or less socialistic government like we have and we have a socialistic government and a complex society and I don't say that in a derogatory sense,

the government at all levels to do this or that, so there is a mix of public and private performance in our total society and from the standpoint of serving the needs, if you want, and you can hear people talking all the time, about government doing this and doing that and doing more. I would say that as to bias in terms of greater services which is very likely to involve expense, of course that's the way I would put it. What is your next point?

Senator HATCH. The next question considers for 44 of the last 51 years the Congress has failed to balance the budget that there is any nonconstitutional likelihood that this bias can be remedied by——

Dr. FORDHAM. Yes; I think if the American public really wants it enough, they can articulate this in two or three ways. The first way is in terms of what kind of people they elect to the Congress, what the choices are with regard to the people that are elected. In the second place, the American public can express itself through various forms of organizations that should have some impact upon the Members of Congress. If the Members of Congress, for example, at a given session are not responsive to public issues with respect to fiscal matters and fiscal responsibility, there is nothing to keep us as citizens from voting them out. The political process doesn't have to be inept.

Senator HATCH. Dr. Crawford?

Dr. CRAWFORD. I think what you are saying is basically true but the problem with that point of view is that each individual Congressman is being responsive to his electorate. There is not one of us in this room that wouldn't like to have wealth transferred to himself from everybody. If we found we could get that transfer we would like it.

Dr. FORDHAM. I wouldn't know, sir. That's a very selfish attitude. I wouldn't buy it for a minute.

Dr. CRAWFORD. That's how we all respond. We all prefer more to less. If we can get more, we will get it.

Senator HATCH. I'm afraid that's been the pattern throughout the country. I agree with you, Dr. Fordham, but on the other hand the question is: Is it practical to think that the people who want a balanced budget, and I would say 90 percent at least or 100 percent, not 80 to 90 percent, that apparently either they are deceived by the representatives or they don't understand how to get their representatives out who are not voting for a balanced budget. Let me give you an illustration. Dr. Smeeding brought up the importance of the congressional budget of 1974—wonderful thing that is because that created the Budget Committee in the Senate, the Budget Committee in the House and the purpose of that act and these two committees is to balance the budget. Since that act came in, the deficit has grown $500 billion in 5 years.

Now I might add our budget has jumped almost $250 billion since that came in. That's a little unfair because I'm counting for 1974 because its effect came in 1976 but the budget was $400 billion in 1976, today it's $616 billion. Let me just phrase the question. The deficit has grown by $300 billion to $400 billion during that period of time. In addition, just a couple of illustrations, in the 3 years President Carter has been in, the man who said he would balance the budget by 1981 and one of the main reasons I believe he was elected as President, now he needs until 1982 but nevertheless was

going to balance it in 1981. In his 3 years, not only has real revenue from private taxpayers doubled but he has increased the budget 32.9 percent, the highest cumulative increase of any President in the Nation.

No. 3, when you consider the budget items as the nonbudget items, he will have presided over the highest 4-year acclivity in the history of any President of around $206 billion. Now to those of us here, what we call supply side people on the Budget Committee, we don't believe the budget process is working worth a damn and we don't think that for all of the beliefs that the Congress is going to respond to the needs of the people and have a balanced budget that it's really going to happen practically. It's not going to happen and one of the reasons it won't is even when President Carter said in his annual budget message a few weeks ago that his $616 billion for 1981 would have a $16 billion deficit is that he added $16 billion padded onto the budget resolution which is currently long and then added $16 billion to that, but then didn't tell me about the off-budget items of $18 billion which were around $10 billion as he came in as President, that they are using that dodge not to tell the American people that the real deficit, assuming we can hold his spending figures, the real deficit will be $34 billion. Now that's a lot of questions but I think those are factors that you understand that have to be brought out to show that I have—you know, I'm a Member of Congress and I have absolutely no confidence, Dr. Fordham, or, Dr. Smeeding, in the Congress to have the self-discipline you have talked about. I think that is not only optimistic, I think it may fly in the face of the full facts.

Dr. FORDHAM. Why don't you go ahead and say naive.

Senator HATCH. It is naive. I have such respect for your expertise that I didn't want to say that out loud.

Dr. FORDHAM. You are quite free to, that's all right.

Senator HATCH. I know that, thank you. However, I would like an answer to that. How in the world it is the—you see, my contention is sitting on the Budget Committee becoming the principal means by which they justify deficit financing. For instance, we bring in the demand-side economist, what I call—Bob might agree—lowered Keynes. We ought to have surplus but these people believe during times of economic prosperity because all through those years, 5 years of surplus, we have had huge deficits and I think what happens is we sit on the Budget Committee, they bring in these neo-Keynesian economists—yes, we should balance the budget, but they list all the reasons why we can't mainly which involve social spending programs and in the end the Budget Committee being as auspicious as it is, comes out and says we want to balance the budget and then they go along with those economists and in the end the American people, to use a colloquialism, gets screwed.

Dr. FORDHAM. That's not just a colloquialism, it's off color.

Senator HATCH. That may be true and I'm not against that necessarily.

Dr. FORDHAM. But the lady in the front row doesn't like the observation.

Senator HATCH. It's a very graphic way——

Dr. FORDHAM. But what you say is very impressive.

Senator HATCH. It's also true.

Dr. FORDHAM. It's true as far as it goes perhaps but looking at it in terms of the proposal that you foster here and you favor, which I don't embrace, if the disposition of Congress to spend is so overwhelming, so pervasive, are you sure that your idea is generally thought of as a useful thing? Are you sure it would work.

Senator HATCH. We are pretty darn sure. Like I say, we have had many, many economists say it will work, including Dr. Crawford. Keep in mind the difference between ours and just a mandated balanced budget is that we provide for accountability in the political process. We say, as Dr. Crawford has brought out here, that spending and taxation should be brought out in the open where people can see it and where congressional Members have to really stand up and be counted.

No. 2, we provide that there has to be neutrality in the budget-making process. We eliminate the present biases which I think you have agreed exist promoting increased spending and taxation. We provide in this budget neutrality. No. 3, also provided for democratic input into government because what it says is that this will insure that public opinion rather than spending lobbies is more accurately reflected in decisionmaking. There is nothing to stop the Congress from spending more except that they have got to vote up front so the people know what we are doing. Two hundred votes in an average 1-year period in front of the Congress that really play on these deficits in the budget. No. 4, we are talking about a principle of liberty, that is political liberty and let me throw out one other question. Given your concern about resorting to any constitutional amendment to impose fiscal responsibility, would you concur in the view that Senate Joint Resolution 126 is nevertheless—the way it's written—it's nevertheless more in the nature of what a constitutional amendment ought to be than one which absolutely requires specified labels of spending or taxation and can a distinction, one aimed at correcting perceived flaws and one aimed at substituting for the political process and we think ours eliminates the bias and also, or at least neutralizes the bias, but also is a more constitutional form of an amendment because it really is in the nature of a constitutional amendment rather than one that requires specified levels of spending and taxation. Would you agree with that?

Dr. FORDHAM. No; I wouldn't. I don't have the full grasp of the subject that you have. You have lived with it and I don't claim to have. I'm thinking in terms of large political ideas with respect to representative government and as I perceive these things, I don't regard this kind of a formulization as something that deserves to be at the constitutional level. If Congress wants to amend the statute that my colleague has referred to, the 1974 act, if he want to embrace a policy of this sort, he is perfectly free to. Why don't you people in the Congress take steps to get this done by amending the 1974 act, set it up that way? You are not dealing in terms of principle. You are dealing in terms of what I regard as rules and I don't think they have a place in the Constitution.

Senator HATCH. That's an interesting point but the fact of the matter is that in the Congress today we don't have the votes to have fiscal restraint as you have suggested that we should have voluntarily through the legislative process.

Dr. FORDHAM. If people won't vote those characters out of office, then they don't deserve any better.

Senator HATCH. The people don't realize—we have representatives in the intermountain West that are adamantly in favor of financing in our society on an annualized basis because we must pay our debts. What they don't tell them is that we've got to borrow to pay those debts so the people in a sense say, well, that sounds logical, and they go from there. Then we have—I can give you all kinds of illustrations. Instead of putting them on budgets so President Carter would have to have said on public television that the total deficit will begin at $34 billion, instead, that Congress passes a law so it can continue deficit financing and do their pet projects to go out and buy more votes with. We can have an off-budget item category that isn't listed in the budget but nevertheless adds to the deficit and Professor Crawford is right. We are going to approach $1 trillion in national debt about the end of this year. Actually we are $879 billion good only until March. The lift of debts limitation again, we will have to do that to pay our debts and increasing the interest payments that we must pay, approximately $70 billion now.

Dr. CRAWFORD. The alarm that seems to be expressed about the national debt, the national debt is approaching $1 trillion. In nominal terms, the income of the Nation for the year will be about $2.4 trillion, about one-third of the annual income of the Nation, so you say to yourself, well, that's awful, yet anyone who owns a home, if you are like me, three times their annual income and that's conservative economics for individuals, so if it's OK for us to be in debt three times our annual income, why should we worry about the national debt being only a third of the national income? I think the worry on the debt is its size because it's $1 trillion. That's something that is somewhat irrelevant. Relative to the size of the annual income, it's not very large. The interest payments on the debt primarily are transfer payments from some people to other people in the Nation who don't represent a net draw on the real purchasing power of the Nation. To the extent that it's foreign held, it does, but that's 15 percent or something, not that significant, so I don't think that we ought to be extremely alarmed about the size of the debt. We should be alarmed about increases to that debt in years when surpluses would be a fiscally responsible thing to do.

Senator HATCH. Let me just say one other thing. In addition to that, we have this four to seven that we have to pay for in the future but for which we have no projected revenues to pay for at the present time and with the bias in favor of spending in our society, we are constantly limiting productivity, growth, and the ability to pay out of these debt situations, so the debt continues to climb a pragmatic rate over the last 5, 10 years, to the point that we could handle $1 trillion of national debt but we are not doing anything responsibly to do it and that is the problem. That's why some of us are in favor because we don't believe Congress will be responsive to hide fiscal irresponsibilities. We believe we've got to have some sort of an approach and I would like you to look at this a little more closely, Professor Fordham. If you read that amendment very closely, you will find that it isn't nearly the rigid amendment that you think it is. It is

written very carefully. It just required up front voting. The Congress can do whatever it wants and a 60-percent, three-fifths vote, is not unusual. It's something we live with every day on the filibuster order. We have to have two-thirds vote for constitutional amendments. It's nothing unusual to have more of a 50-percent vote, but I'd like you to look at the amendment a little more carefully because it's not one of these rigid amendments that Congress ought to balance the budget and that's why it's getting a lot of acceptance bipartisan back there because all of our colleagues don't have the self-discipline which I admit would be better. It would be the ultimate and you would be right on that but my colleagues, both the spenders and the non-spenders, don't believe that we have the self-discipline in the Congress to really resolve this big spending problem that we have undergone, especially in the last 10 years.

Although you are theoretically right in some ways, my personal opinion is that you are practically wrong. If you come back and spend 2 or 3 weeks with us, we will be able to change you around.

Dr. FORDHAM. If you have a golf course.

Senator HATCH. I would be willing to do that to get you on. Professor Smeeding?

Dr. SMEEDING. I just want to mention that one thing that I sort of missed before was one reason why we are having deficits. I know people are going to find this hard to believe, but Federal taxes have been falling as a percentage of gross national product—15.5 in 1970, 15.2 in 1978, 13.2 percent of GNP—we have been cutting taxes.

Dr. CRAWFORD. Cutting direct taxes but not indirect taxes.

Dr. SMEEDING. This is all Federal taxes. I am not talking about State and local taxes.

Senator HATCH. Oh, yes, they are because they are mandating most of the State programs today and most of the State bureaucracies.

Dr. SMEEDING. They are mandating the Federal taxes, but they are paying States $40 billion a year in intergovernmental revenue sharing.

Senator HATCH. When LEAA spends money to help our local institutions here, what happens is that LEAA comes in with all kinds of strings requiring all kinds of bureaucrats in Utah to meet those strengths and next thing you know—LEAA may not be the best illustration, but it blocks out and stops the flow and we are ending with nothing but Federal increases or State increases to meet them but as I see the percent of growth national product on lease and a percent of gross Federal income, it's considerably higher than what you have said here and this comes from the fiscal year 1980. We have gone up from 16.6 percent since 1959. Maybe you are talking about real increases but by 1982 the estimate is 21.6 percent, percentage of gross revenues.

Dr. SMEEDING. Are these Federal Taxes?

Senator HATCH. This is budget receipts as a percentage of gross national product.

Dr. SMEEDING. Does that include Federal, State, and local revenues?

Senator HATCH. No, just Federal, so it's 21.6. If you read the budget, it goes over 22 percent in 1983 under the Carter proposed budget, so your figures—I don't know where you got them.

Dr. SMEEDING. From the Advisory Commission on Intergovernmental Relations——

Senator HATCH. Let's go to the U.S. Federal budget that I have right in front of me and I'm on that committee, wherein fiscal year 1979 and 1982, 21.6 percent as a percentage of gross national product and that includes receipts outlaid and Federal debt as a percentage of gross national product.

Dr. SMEEDING. It includes debt?

Senator HATCH. Of course it does. It does not include debt. These are budget receipts, the 21.6 percent. Now if you want Federal debt, I could give you that as well but the budget receipts are a percent of gross national product in fiscal year 1981 and 21.6 in 1983. As I recall, I don't have it, it's over 22 percent and I can tell you that's what's wrong. That's what is going on here in our country. I hate to say it but I think Bob Crawford is right on this matter and he's recognized that in this amendment it doesn't mandate a balanced budget. Congress can change that but it puts an up-front vote once a year, if they want to change it and it lets everybody in America know who the budget busters are.

Professor Fordham's ideal "we can throw these people out who have been——

Dr. SMEEDING. But we need a constitutional amendment to get there?

Senator HATCH. That's right, that's what many of these people feel.

Dr. SMEEDING. Then it will pass, if the majority of voters want it.

Senator HATCH. It would pass if we could get it through the Congress. I can't conceive of most Members of Congress in this election year voting it down. I think 60, 70 votes in the Senate and I think we would get our two-thirds in the House and submit it to the States' constitutional amendment. The question is we need one more vote to do that and whether the leadership in the Senate will permit it to be brought to the floor during this election year because knowing that it will embarrass a whole host of their 24 Democrats up for election and maybe some of the 10 Republicans.

Dr. SMEEDING. Could Professor Rasmussen say one word here?

Dr. RASMUSSEN. Senator Hatch, I think you may be confusing expenditures versus receipts. This table deals with receipts, not with taxes.

Senator HATCH. We've got receipts. Let me show it to you. It's right in the Congressional Record.

Dr. RASMUSSEN. The Budget in Brief shows that in 1974,19.6 percent of gross national product accrued to the Federal Government.

Senator HATCH. In 1974 it was 19.5.

Dr. RASMUSSEN. Expenditures are higher because of the deficit. The receipts are not as high as expenditures.

Senator HATCH. But when you consider budget receipts as a percent of gross national product, they will be 20.1 percent. In 1982, 21.6 and in 1983, 22 percent.

Dr. RASMUSSEN. Those are estimates.

Senator HATCH. No, they are not. Well, let's go back to 1979. In 1979—which is not—that's an estimate. In 1978, is not an estimate, that's 19.7 and they estimate and I think they are going to be low in their estimates that by 1983 it will be over 22 percent so you are talking about 15.9, 22.6 by 1933 which is a serious, serious jump. As you

know, when you consider that as a percent of gross national product and our gross national product is going to go up and still have huge growth and receipts of the U.S. budget.

Any other comments which you fellows would care to make on this?

FIRST UNIDENTIFIED SPEAKER. Can we make one from the floor? They say figures don't lie. We've got all kinds of figures that are lying here and I think that we should be proud that we have a Senator that's honest enough to go back there and try to straighten a few things out. It seems like we've got a bunch of stumblebums in Washington. All they know how to do is spend money and this gentleman here, there are certain classes of people that can make money even if there is inflation but take the ordinary guy with a lunch bucket. He will be kicked out of his house. He can't even afford to drive his car to work.

Now another thing, Khruschev, when he was over here, said he would bury us. I think you gentlemen were around at the time he was over here. I think I understood the attitude of the United States if we are not going to bury us in this money business, and they've got enough in Washington to lobby these here and you notice it in the papers here, they all got their hand out, how much is it worth to you to get that program here and I'll try to run it through for you. How much can I get out of it is all that they got in their hand.

Now we've been giving the world our resources, just literally giving it away, haven't we? About 3 or 4 years ago it was $44 billion the Russians told us. Now it's $60 billion. The latest report they are not even paying the interest. They don't intend to. Why don't we give some of that money and some of that wheat and some of it back to the farmers. Let them make alcohol out of it. So we got another thing that's running parallel to the oil companies here is another stumblebum trick.

Senator HATCH. This is the last stumblebum trick because we've got to end this.

FIRST UNIDENTIFIED SPEAKER. They took the depletion right away from the oil companies, the major oil companies took that depletion right away from us. When the gas was 28 cents, 29 cents, and 32 cents a gallon, they were still making a lot of money. Then they took the depletion right away from them, that money was supposed to be used—25 percent of that was supposed to be used to go out and find new oil deposits and one of the comments that come out of the major oil companies said you will be sorry that you did this. You will be sorry you pulled this one on us. We will make it up at the pump, nobody understood what they were talking about at the pump. Now the prices continue—they could go to $5 a gallon. All right, how is that farmer going to go out there and at $5 a gallon on his farm fuel and grow crops. He can't. He's got to go to—they are going to buckle and harness. They've got some back in Washington trying to protest what it is that's going on. I think the whole thing this brother here is trying to stop, get it up to a certain level then put a lock on the top of it to a point where the big spenders have got to show his position. If he's going to come over the top of that and throw more money away, he's got to show his position. I thank this brother here for being smart enough to see what's happening to the country and try to put some sense of level on top ot it.

Senator HATCH. There are 23 cosponsors. We really haven't had much time to go out after cosponsors. Let's have one more point from the audience. State your name. Let's bring up your points and then we will try and bring this to a close.

SECOND UNIDENTIFIED SPEAKER. First of all, I'd like to say to Dr. Crawford that I resent the fact that I was compared to the U.S. Government. I want to tell him that I resent the fact that I was compared to the U.S. Government. I got a debt with my home but I have made provisions to pay that off either through my life with working for it or through my insurance in dying. That home is going to be paid off. My indebtedness is going to be paid off. The United States is not paying off its debt. I'm still paying for the chicken promised in every pot in the Roosevelt administration and I resent that.

No. 2, I resent the fact that Dr. Smeeding tried to tell me I've got less taxes. I don't care if Senator Hatch is right or Dr. Smeeding is right. I know what my taxes are. They are going up. They are not going down.

Senator HATCH. I know what the percentage gross national product is because I sit on that committee every day.

SECOND UNIDENTIFIED SPEAKER. I know my taxes are going up and my main question I have is directed to Dr. Fordham. When you talk about basic human needs, are you talking about life, liberty, and the pursuit of happiness or are you talking about shelter, food, and health provided by the Federal Government?

Dr. FORDHAM. I don't separate these out.

SECOND UNIDENTIFIED SPEAKER. Well, I do. I believe that the founders of our Constitution said that we were all created equal under the law so we will be judged under the law. They didn't say to take away from this person and give to this person and make everybody equal financially.

Dr. FORDHAM. This is no disposition for anybody to make any more. The unevenness in our society is extraordinary.

SECOND UNIDENTIFIED SPEAKER. That's the way people are born. They are born unequal.

Senator HATCH. If I could interject right here, Professor, there is a big desire to distribute the wealth, redistribute and take the wealth from those who have to those who don't. There is a tremendous push back there to do that although there is a lot of reticence to do it. Affirmative action programs are a perfect illustration and the programs that they want to have in the past, one of the debates on the civil rights took place—Hubert Humphrey—there will never be a quota system because all we want is to be treated equally and they have done away with quota systems but are approaching it with affirmative actions really of themselves discriminate one minority group over one and there are some approaches back there that really back up what this says.

SECOND UNIDENTIFIED SPEAKER. Could I just finish what I had to say which leads to the point of why do people think that for us to pay tax to the IRS and them to give tax to the GAO and then to give that money to another Federal bureaucracy and then to give that to the State and back down to local, how can that possibly be more efficient than for my city of Spanish Fork to collect those taxes and find out who needs welfare, if it is needed at all. How can we give

a dollar to the Federal Government and go through four bureaucracies and come out less than the local one.

Senator HATCH. Let's start with Professor Crawford.

Dr. CRAWFORD. Whether you resent the fact that I compared—I didn't compare you with the Federal Government. I said that you benefited, you have a mortgage and a debt and have an interest rate below the current rate of inflation. I will pay off mine, too, but every dollar you pay back the next year is going to be worth 10 percent less, 13 percent less than it is today. You have a fixed nominal claim you are paying back but you are claiming it back with dollars that are losing their real value and you are gaining and you can state as long as you want that you are not but you are and you are gaining from that.

SECOND UNIDENTIFIED SPEAKER. I am gaining in one point. My house is worth more now today but I'm losing in price of food. I'm losing in price of oil. I'm losing in price of everything that I buy.

Dr. CRAWFORD. Only if your salary is not keeping pace. I expect your salary is keeping pace with those prices.

SECOND UNIDENTIFIED SPEAKER. Especially if they only raise it 7 percent and everything else is going up 14.

Dr. CRAWFORD. Yes, I suffer from the same rule. The same things that affect you, affect me.

Senator HATCH. We are getting into a basic economic discussion which may be a little bit off the subject. Let's go to Dr. Fordham.

Dr. FORDHAM. I would like to make two points. I would like to respond to this gentleman back there. I can understand his concern and outrage but life is—is not frontier anymore and all of us participate in what amounts to a certain percent to a redistribution of wealth, by State, local, and national action. Now you may not like that but I don't see any escape from a large measure of it in order to achieve a minimal level of decency in the living conditions of our people. I have that much concern about the less favored people in our society.

I would say that while I can understand your point, it's not that black and white. We are to a large extent a socialistic society because of our interdependence and our concern for our fellows.

SECOND UNIDENTIFIED SPEAKER. We don't need to be. I'm concerned with my neighbors, too, and I wouldn't mind being on a local level and helping my neighbors. I have helped neighbors in need. We go out and put up a fence when somebody's falls down. That doesn't mean the Federal Government has to do that for me. It's going to cost him to do it.

Dr. FORDHAM. That depends on the vagaries of human circumstance, what one individual may do against the other. Society doesn't operate that way but it at least reaches people who might seriously be neglected.

SECOND UNIDENTIFIED SPEAKER. I don't think those people would be seriously neglected on the local level. They would be more helpful.

Dr. FORDHAM. You should have seen—with respect to our black citizens—what I observed when I was a boy in the South. I want to finish another point and then I will abstain. You said a while ago something to the effect that this is a supermajority mechanism to enable engaging in spending in excess of receipts for particular projects.

There would be a vote specifically on that. You spoke of it as if it wasn't too difficult a thing to achieve.

Senator HATCH. Oh, I said that it's something we live with every day. It's only 60 percent in this bill. It's two-thirds on a treaty, two-thirds on a constitutional amendment and we live with that all the time. There is no problem. We wanted to make it a little more difficult for them with a one vote each year to go out and continue to deficit spend.

Dr. FORDHAM. It occurs to me that you ought to require more than that, if you are deeply committed to this idea.

Senator HATCH. Let's put it this way. I would prefer two-thirds but 60 percent is more than 51 percent which shows that we put some burden on those that want to deficit spend and come forward and vote that way. We have done it on an annual basis, 203 votes during the year which may have caused the deficit spending. We have made it more difficult than just a 51-percent vote. If you will recall, on labor law reform they had to get 60 votes to have enclosure and finally had to pull the bill down because they couldn't get that 1 extra vote, so if there are enough of us in the Senate who would vote to not deficit spend that particular year—say there were 59 of us, it means that they wouldn't deficit spend that year so it does put a burden on them. I might say that there has never been a budget resolution in either the House or the Senate which has been approved by a vote of 66 percent, so that shows a little more of a reasonable approach then having a two-thirds vote. Never in the history of the House or the Senate has there been a vote in excess of 66 percent permitting any budget resolution, so you can see 60 percent gives them an opportunity—66 probably never, so that was the criticism with the 66 and two-thirds percent supermajority vote. That's why we put a more moderate vote in here that people are used to perhaps in the filibuster rule, the three-fifths vote necessary for that and it would not be easy but it would also be in a situation where there was a war and a good case could be made it would not be superdifficult either but it would be difficult in every case.

Dr. SMEEDING. I wanted to thank the Senator for giving me a chance to appear, Jeff Fordham says pretty much the way I feel about equality and inequality, "born equal" and "making" equal. But in closing I think I would just like to say that part of the problem I see with this amendment made up a large part of our discussion here today, over what our Federal receipts are and, in fact, what is "on budget" and what is "off budget," and what is "national income." I see these problems as appearing again and again and again in Congress and I fear that they are going to waste their time—in some sense we wasted our time here today, debating whether the level of taxes or receipts or whatever are going like this, that and the other thing. That's what Congress is going to do and if they don't want to balance the budget, they will find some way around it, so why bother to have a balanced budget amendment.

Senator HATCH. Because that makes them listen to the people. Let me just say this. I am very appreciative that you excellent gentlemen have taken time out of your busy schedules to be with us today. I would ask that the statements of both—do you have a printed statement with your. Dr. Fordham? I would ask that the typed statements

of all three of these expert witnesses be placed in the record as though given in full because there are many good ideas and provocative thoughts that they have had in these statements. If you care to, you can correct any of these that you care to do, placed in the record and make them part of the full record.

I'm very grateful to you folks. I think we have had a provocative exchange and I think it's been good for the folks here. I think it's been good for me and I hope it's been interesting and fun for you. We do appreciate you coming down and testifying.

With that, we will now conclude the U.S. Senate Judiciary Committee hearing on Senate Joint Resolution 126, proposed constitutional amendment to balance the budget and thank all of you good citizens for being here. We hope you have benefited from it. Thank you very much.

[Whereupon, the hearing was concluded at 1 p.m.]

[The prepared statements of Dr. Fordham, Dr. Smeeding, Dr. Rasmussen, and Dr. Crawford follow:]

PREPARED STATEMENT OF DR. JEFFERSON B. FORDHAM

Let me speak first in general psychological and political terms. In my perspective, proposals for limitation of federal revenue raising and spending power are quite at odds with the robust American spirit of self-reliance and confidence in our institutions. For my part, I believe in representative government and I would not fetter our national representatives in making the requisite policy decisions as to finance. In this perspective, I would simply put aside proposals such as Senate Joint Resolution 126, 96th Congress, 1st session. I eschew a negative attitude. What is needed is an affirmative outlook—a commitment to making representative government work at the national level. The proponents of such constitutional proposals as Senate Joint Resolution 126 make me think of a strong man who is so fearful of hurting himself that he has his hands tied behind his back.

It is appropriate to note that a balanced-budget policy for state and local governments is prudent; but even that does not have to be mandated by express constitutional provisions. The posture of the Congress, it must be stressed, is very, very different from that of a state legislature. It is true that the Congress is a legislative institution of delegated powers, while the reserved powers are vested in the state legislatures; but the fact that Congressional powers are broad and are exercised with a reach that covers the totality of American society—a complex, highly interdependent national community—renders the Congressional posture unique.

The proposition XIII fever that has spread beyond California to other parts of the United States is an affront to the American spirit. I note its infection in Senate Joint Resolution 126. It proclaims distrust of representative government and in a wooden fashion would severely limit the range of choice of representative government in providing the funds necessary to finance needed governmental services.

Such is the interdependence of the human condition in contemporary society that there is no escaping extensive dependence upon government at all levels to meet individual and social needs. In a word, whether one likes it or not, we are all in it together and our commitment is, or should be, to assure through organized society at least a minimal response to the ills and hazards that all of us are heirs to.

All this being true, it would be folly to hamper the national government in the exercise of fiscal powers directed to assurance of the meeting of basic human needs.

What we need in the Congress is not regressive processes but enlightened performance of legislative functions by able men and women whose devotion to the public interest rises above the claims of party or any special interests. The legislative article of the Constitution is adequate to the needs of our society. Let us give it effect.

Of course, there are interdependencies in the federal system. Congress is committed to general revenue sharing with state and general-function local governments—a multibillion-dollar program that could be a likely area for budget cutting were such action undertaken.

As others have observed, the Constitution is not designed to embrace any particular economic theory. The way to act upon budgetary policies is by resort

to the legislative process within the constitutional framework. Such policies should, in short, be left to the political branches. But were such an amendment as Senate Joint Resolution 126 adopted, it is likely that we would see resort to the courts to obtain review of budget-making actions. This, if jurisdiction were entertained by the courts, would be at odds with the principle of separation of powers as we have known it and be an obstacle to smooth and effective operation of the budgetary system.

The override provisions of Senate Joint Resolution 126 and similar proposals are very dubious innovations. Why should we not adhere to the principle of majority rule as we do with respect even to a declaration of war? Override provisions operate to give controlling effect to the votes in excess of a simple majority.

Senate Joint Resolution 126 has an extraordinary provision to the effect that its provisions shall be construed in accordance with their meanings on the date on which this article was submitted to the states for ratification. This may appear superficially to be no worse than innocuous, but actually it bespeaks a rigid specificity, quite at odds with American constitutionalism, since it does not involve large concepts or principles that permit interpretation responsive to changing conditions and attitudes as has been characteristic of our national experience. It is a far cry from Chief Justice Marshall's perception of the Constitution as embodying principles that would endure for the ages.

In sum, the power of Congress to adopt an unbalanced budget is a profoundly important—if not critical—instrument of effective federalism. We should nurture responsible exercise of the power by the political branches but not make the grave mistake of throttling resort to it.

I am concerned with central ideas rather than draftsmanship but I will make one drafting point about Section 1 of Senate Joint Resolution 126. The section would forbid appropriation measures which would cause expenditures in a given year to exceed expenditures in the budget for the year. This refers to expenditures rather than receipts and, thus, would not prevent outlay in excess of actual receipts since such receipts might prove to be less than the expenditures provided for in the budget.

Voters who favor conservative budgetary policies and practices should express their views at the polls. Of course, I apprehend that it will be said that the political process is largely affected by the fact that all sorts of groups in society have lively interest in continuing this or that program that is beneficial to them. There is realism in this, just as there is in recognizing that there are differences of view as to spending for defense. I say simply that we should not respond by placing limitations in the Constitution but should try very hard to make representative government work by electing representatives who place the general welfare above special interests.

This is the birthday of George Washington, the great leader who presided over the Constitutional Convention in 1787. Does anyone here suppose that he could have been infected with proposition XIII thinking?

PREPARED STATEMENT OF DR. TIMOTHY SMEEDING AND DR. JEWELL J. RASMUSSEN

Mr. Chairman, while we are in sympathy with the objectives of this proposed amendment to promote fiscal responsibility and improve the budgeting process, we strongly oppose a constitutional amendment which would mandate an annually balanced Federal budget or limit receipts of the Federal Government to a fixed percentage of national income. The reasons for our opposition are briefly outlined below.

As a preface to these statements relative to our opposition to a constitutional amendment, we should like to make the following points:

1. We do not discuss nor defend any given level of expenditure by the Federal Government. This is a matter to be resolved through the democratic process of electing members of Congress who represent the majority will.

2. We are not opposed to imposing fiscal constraints if this is what the majority of the people wish, but we are concerned with the process of exogenously mandating such constraints.

3. We are concerned with mandating such limits by means of a constitutional amendment vs. statutory legislative controls.

4. We are somewhat impressed with current budget controls and favor continuation of the more flexible statutory approach by strengthening the Congressional Budget and Impoundment Control Act of 1974.

1. A CASE FOR BETTER BUDGET CONTROL

We fully acknowledge that the budgeting process has exhibited weaknesses in the past and that a good case can be made for strengthening controls over the Federal budget. But the risk of encountering serious problems by embedding any set of specific conditions and requirements in the Constitution is very great and could well result in more harm than good to the U.S. economy. Specifically, we believe that the problems created by an annually balanced-budget amendment would be far greater than any presumed benefits to be derived from such an amendment.

The Constitution should contain only broad general principles and guarantees and not a detailed blueprint for the conduct of government such as a specific budgetary approach that may be fashionable today but prove to be inappropriate in later years. Furthermore, it is presumptuous for one generation to assume that it has greater wisdom as to what is good for later generations than they will possess themselves. Hence, if further strengthening of controls over the Federal budget seems to be necessary, such controls should be effected through changes in Federal law and not by constitutional amendments.

2. RECENT IMPROVEMENTS IN THE BUDGETARY PROCESS

New machinery is now in place to improve the budget process and produce greater fiscal responsibility by the Congress. This important step was taken by the enactment of the Congressional Budget and Impoundment Control Act of 1974. This Act establishes new congressional budget procedures, a new fiscal year period, and requires new information to be presented in the Federal budget. As a result of the new Congressional Budget Act, a new legislative agency, the Congressional Budget Office, and new Committees on the Budget in each House have been established to assist the Congress in focusing on overall budget totals as well as the specific programs. This new Act became effective in fiscal year 1976.

With reference to this new approach to the Federal budget, Alice M. Rivlin director of the Congressional Budget Office, made the following comments:

"For the first time in its history, the Congress of the United States is focusing explicitly on budget decisions, on budget priorities, and on the problem of fiscal policy. They are finding it very difficult, but they are talking about the right subject. Over the next few months and years, if they keep at it and don't chicken out and go back to their old ways, you will see a more intelligent debate in Congress and, I hope, actions that will keep us on the road to recovery without inflation."[1]

As incredible as it may appear, the Congress of the United States had never voted on the entire budget prior to 1975. Under the system prevailing before this year, hardly anybody ever looked at the budget as a whole after it got to Capitol Hill. Spending decisions were simply made in a series of complicated committee procedures. The 1974 Act required for the first time a comprehensive review of expenditures and revenues, and concurrent binding resolutions on the following year's budget.

The new budget process is beginning to show results and should be given a chance to see if more effective controls over spending and deficits can be achieved before turning to a rigid, constitutionally mandated requirement of an annually balanced budget. Careful attention should be given to strengthening the new process as much as possible. One improvement, for example, might be requiring multiyear budget planning. Surely a more rational budget process is obtainable by legislation rather than by a rigid constitutional approach in a changing economy.

3. DOES SENATE JOINT RESOLUTION 126 IMPLY ABANDONMENT OF STABILIZATION POLICY?

Since the end of World War II, both the executive and legislative branches of the Federal Government have been committed to a program of stabilizing the U.S. economy in terms of employment and unemployment levels, general price stability, economic growth, and balance in our international payments. The Employment Act of 1946 states unequivocally that "The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practical means . . . to promote maximum employment, production, and purchasing power." The Federal budget is one of the principal tools of implementing this stabilization program.

---

[1] Committee for Economic Development "Progress Toward Recovery of the Economy"—CED Symposium, June 1975, p. 15.

Are the sponsors and supporters of Senate Joint Resolution 126 prepared to abandon the long-standing policy of economic stabilization or at least the role of fiscal policy in stabilization? Clearly, a mandated annually balanced Federal budget, insofar as it is realized, will nullify the role of fiscal policy in stabilizing the economy. In fact, even attempts to balance the budget when the economy is in a slump by increasing taxes or forcing cuts in spending will actually worsen economic conditions and send the economy into a deeper tailspin, thus further increasing the deficit. To abandon the fiscal policy instruments places increasing strain on other major instruments as monetary policy and direct controls.

We acknowledge that countercyclical fiscal policy has limitations that are becoming increasingly apparent and that political biases have no doubt resulted in both more and larger deficits than are economically justified. But it is going too far to demand that there be no more deficits except in declared national emergencies. What we should seek is more fiscal descipline—avoidance of waste, inefficiency, unnecessary government programs, etc.—but not at the cost of binding the Federal Government through a mandated annually balanced budget is its attempts to serve as a balance wheel for the national economy.

4. THE BALANCED BUDGET AMENDMENT (S.J. RES. 126): A CRITICAL ANALYSIS

Despite the well meaning intentions of its sponsors, S.J. Res. 126 is a poor and inflexible substitute for responsible and effective congressional budget control. Several analysts, including such conservative figures as Alan Greenspan, Jude Wanniski, William Stubblebine, and James J. Kilpatrick, as well as more liberal analysts such as Walter Heller among others, have for some time now pointed to the conceptual and practical futility of federal balanced budget amendments.

For instance, most economists and budget analysts realize the difficult problems involved with balancing ex ante forecasts of reciepts and expenditures with the ex post reality of actual receipts and expenditures which are known with certainty only 18-24 months after they are adopted. In economists' terms, actual federal budget receipts and expenditures are endogenous; that is, they are determined by the state of the economy.

If the national economy begins to slide, tax revenues and other receipts fall while expenditures for income support (unemployment insurance, Food Stamps, etc.) rise. A shortfall of 1 percent in actual rather than anticipated GNP creates roughly an $8 billion deficit, while a 1 percent increase in the unemployment rate produces a deficit increase of about $15 billion.[2] Assuming that the proponents of balanced budget amendments seek only to balance the budget ex ante (vs. ex post), considerable pressure is brought to bear on the accuracy of estimated (forecasted) receipts and expenditures. If in fact a majority of congressional leaders do not intend to actually balance the budget, they will advocate the most optimistic forecast of budget receipts and the least generous estimate of expenditures which are available. In other words, the budget "game" becomes one of finding those forecasts—and there are several—which most closely represent one's fiscal interests. In such a situation, if the majority of Congress feels a deficit is necessary, a given set of assumed revenue and expenditures would lead the populace to believe that the budget would be "balanced," when in fact no such an outcome was intended. In short, if Congress does not wish to balance the budget, they will not do so. Regardless of the exogenously imposed "limitations" under which they must operate, unless Congress has the will to limit expenditures and balance budgets, there is no way to force them to do so. Our comments below will bear out this observation.

More importantly, S.J. Res. 126 avoids the ultimately essential question of how to balance the federal budget. If a deficit arises, should expenditures fall or should taxes increase? Presumably the sponsors of this bill intend the former, not choosing to balance the budget via additional tax revenues. But then which expenditures should be decreased? One most likely candidate is state-local revenue sharing. In the aggregate, state and local governments have been running surpluses of $20–30 billion, while Federal aid to state and local governments has been on the order of $70 billion in recent years.[3] However, were the Federal Gov-

---

[2] See B. MacLaury, "Proposals To Limit Federal Spending and Balance the Budget" in "Setting National Priorities, the 1980 Budget," J. Pechman, ed. (Washington: Brookings, 1979).

[3] "Economic Report of the President," 1979. Table B–72, p. 267; and "Advisory Commission in Intergovernmental Relations."

ernment to reduce such expenditures, states and localities would probably make up at least some of this revenue loss via increased taxes. If such a situation materializes, the overall tax limiting purposes of the amendment would seem to be self defeating.

It seems curious that, while the Federal Government has in recent years taken several steps to improve budgeting procedures, they have not yet taken it upon themselves to enact even a statutory balanced budget limitation, much less a constitutional amendment to this effect. Quite possibly most members of Congress realize not only the lack of flexibility which is pointed out above, but also they realize the practical problems encountered when attempting to cope with balanced budget limitations which seek to box-in the budget process. The practical problems with S.J. Res. 126 are outlined below.

(1) The Congress shall adopt for each year a budget, which shall set forth the total receipts and expenditures of the United States. No budget in which expenditures exceed receipts shall be adopted, unless three-fifths of each House of the Congress approve such budget by a rollcall vote directed solely to that subject. The Congress shall not pass and the President shall not sign any appropriation bill which would cause the total expenditures for any year to exceed the expenditures in the budget for such year.

(2) The receipts in any year shall not exceed, as a proportion of the national income, that collected in accordance with this section in the prior year, unless a bill directed solely to approving a specific increase in such proportion has been passed by each House of the Congress by rollcall vote and such bill has become law.

It is not necessary to include the final three sections of the bill in order to show its practical weaknesses. Our comments will focus on two issues: definitions and incentives thereby created, and briefly, timing problems.

The amendment, perhaps purposely so, leaves several ambiguous terms which need to be clarified (see underlines above). For instance, do "receipts" include all forms of Federal taxes and government charges, plus revenue from Federal debt notes issued, or only part of such receipts? If only taxes are counted as receipts (as in the case of state tax limitation proposals, e.g. California's proposition 13), is there not an incentive for the Federal Government to institute "user charges" or "fees" as a substitute for inadequate tax revenues? Do "expenditures" include both "on-budget" and "off-budget" items? Do they include "government sponsored entities" such as the Federal National Mortgage Association? This is no trivial matter. Together these latter two item are estimated to include $41.1 billion of outlays in 1980.[4] Clearly if "off-budget" and "government-sponsored entities" are excluded from expenditures for purposes of this amendment, there is an incentive to override the budget limitation by transforming certain expenditures to these categories. On grounds other than efficiency, for instance, loan programs might be substituted for subsidies provided that the loan program and its administration fall into one of the off-budget categories.

Receipts are limited to what proportion of "national income" as determined in what year? The attached table from the U.S. Budget in Brief, Fiscal Year 1981, indicates that federal budget receipts as a percentage of GNP have remained relatively constant at about 18–20 percent since 1970.[5] However in recessionary years, tax revenues fall below those collected in more normal times. For instance, 1976 tax revenues as a percentage of GNP are only 18.5 percent. However, the second section of the budget amendment explicitly restricts (anticipated) tax receipts to such levels in following years. Hence government receipts would be inherently biased in a downward fashion—the worse the recession and the lower the receipts, the lower the ceiling in subsequent years, unless Congress explicitly acts to change this proportion which, of course, they would be almost necessarily forced to do. As such, this section of the amendment would seem to unduly hamper responsible budgeting procedures by forcing government to explicitly counteract recession-induced receipt ceilings.[6]

---

[4] See MacClaury, op. cit., p. 219.

[5] When trust account receipts (e.g. OASDHI payroll taxes) are subtracted from receipts, Advisory Commission on Intergovernmental Relations figures for 1979 indicate that federal tax receipts have fallen from about 16 percent of GNP in the 1950's to 13 percent of GNP in recent years. In contrast, state and local taxes, as a percent of GNP, have been steadily increasing.

[6] Of course, total outlays (including off-budget entities) also peak at such recessionary times (due to transfer payment increases induced by a recession). The attached table indicates that since the recession of FY 1976, total outlays as a proportion of GNP have continued to decline.

TABLE 6.—FEDERAL FINANCES AND THE GROSS NATIONAL PRODUCT, 1950-83

[Dollar amounts in billions]

Fiscal year	Gross national product	Budget receipts		Outlays						Federal debt, end of year			
				Unified budget		Off-budget Federal entities		Total		Total		Held by the public	
		Amount	Percent of GNP	Amount	Percent of GNP	Amount	Percent of GNP	Amount	Percent of GNP	Amount	Percent of GNP	Amount	Percent of GNP
1950	442.1	$70.6	16.0	$82.6	18.7			$82.6	18.7	$270.7	61.2	$220.4	49.9
1960	473.3	79.2	16.7	92.1	19.5			92.1	19.5	287.0	60.6	236.8	50.0
1961	487.3	82.5	16.9	92.2	18.9			92.2	18.9	289.0	59.3	238.3	48.9
1962	508.3	84.4	16.6	97.8	19.2			97.8	19.2	292.6	57.6	240.1	47.2
1963	548.0	86.7	15.8	106.8	19.5			106.8	19.5	303.3	55.3	248.0	45.3
1964	578.3	89.6	15.5	111.3	19.3			111.3	19.3	309.3	53.5	250.8	43.4
1965	616.2	112.7	18.3	118.6	19.2			118.6	19.2	316.0	51.3	255.4	41.4
1966	657.1	130.9	19.9	118.4	18.0			118.4	18.0	319.9	48.7	254.3	38.7
1967	721.1	116.8	17.0	134.7	18.7			134.7	18.7	326.2	45.2	257.8	35.7
1968	774.4	148.8	19.2	154.3	20.4			154.3	20.4	347.6	44.9	266.0	34.4
1969	839.0	153.7	18.5	178.8	21.9			178.8	21.9	354.8	42.3	263.7	31.4
1970	883.7	187.8	21.0	184.5	20.4			184.5	20.4	370.9	42.0	274.8	31.1
1971	956.0	193.7	20.2	196.6	20.5			196.6	20.5	398.0	41.6	302.9	31.7
1972	(1) 119.2	208.6	18.9	211.4	19.2			211.4	19.2	427.3	38.8	323.8	29.4
1973	(1) 130.1	232.2	18.9	232.0	18.9			232.0	18.9	437.3	35.6	324.3	26.4
1974	(1) 137.6	264.9	18.9	247.1	17.6			247.1	17.6	471.1	33.6	343.3	24.5
1975	(1) 150.2	281.0	18.9	268.6	18.0	10.1	(2)	278.7	18.7	533.2	35.8	394.7	26.5
1976	(1) 167.3	301.8	18.0	326.2	19.5	1.4	.1	327.6	19.6	631.9	37.8	477.4	28.5
1977	(1) 921.0	360.0	19.3	365.4	19.6	8.1	.4	373.5	20.0	698.2	37.5	549.1	29.5
1978	(1) 963.9	399.6	18.5	402.7	18.6	7.3	.3	410.0	19.0	771.5	35.8	607.1	28.2
1979	(1) 995.4	463.0	19.4	455.8	19.1	6.7	.3	462.5	19.3	841.1	35.2	662.6	27.7
1980 estimate	(1) 313.4	465.9	19.5	493.7	20.7	18.3	.8	512.0	21.4	931.9	38.9	749.0	31.3
1981 estimate	(1) 518.0	523.0	20.1	562.6	21.6	12.4	.5	575.0	22.1	1,028.1	39.5	826.0	31.7
1982 estimate	(1) 784.4	665.0	21.7	615.8	20.1	16.8	.5	632.6	20.7	1,141.2	37.3	910.2	29.7
1983 estimate	(1) 887.6	691.1	22.2	686.3	22.1	18.1	.7	704.4	22.6	1,267.1	40.7	1,000.3	32.1
	(1) 913.0	780.0	22.5	774.3	22.0	12.0	.4	786.3	22.4	1,387.2	39.5	1,100.5	31.3

[1] 0.05 percent or less. Source: "U.S. Budget in Brief," fiscal year 1981.

The careful reader will notice that we have compared total tax receipts and budget outlays to Gross National Product above. Why not "national income" as the amendment states? In fact, one might ask what specifically does the amendment mean by "national income"? Does it mean "National Income" as in the National Income Accounting (NIA) framework, or does it mean something else? For instance, suppose that "National Income" is as defined in the NIA. If so, a comparison of total tax revenues with National Income is misleading because indirect business taxes, treated as costs of doing business and including about $20.0 billion of federal excise taxes, have been already removed from the National Income denominator but are included in the numerator of the ratio?[7] Suppose such problems could be overcome by netting Federal excise taxes out of the numerator (total Federal taxes)—thus comparing National Income to taxes actually levied as that income. Such an omission immediately leaves the possibility (and incentive) for increasing Federal excise taxes. For instance, the recently proposed substitution of a value added tax for all or part of the OASDHI payroll tax is perfectly legal and within the bounds of S.J.Res. 126, based on the official "National Income" definition of the tax base and a consistent definition of taxes. This is to say nothing of the immediate inflationary impact of such a tax—an eventuality which the proponents of balanced budget amendments presumably seek to avoid. On the other hand, if national income means GNP (or NNP) as is consistent with an all inclusive definition of Federal taxes, trends in both Federal expenditures and receipts as a percentage of such income as cited above, do not tend to support the need for a balanced budget amendment at all.

Finally, in a recent letter to Birch Bayh, Chairman of this Subcommittee, Lawrence H. Tribe[8] points out an important timing—cyclical problem with Section 1 of the amendment:

"Consider, then, the way Section 1 would work in practice. Assuming the absence of the requisite three-fifths vote, Congress would presumably adopt a balanced budget at the appropriate stage in the planning cycle. (I say "presumably" because the mind boggles at judicial or other mechanism for enforcing a provision of this sort; but I will let that difficulty pass.) Suppose the budget provides for expenditures in Year X of $1 trillion and receipts in Year X of $1.1 trillion. Sometime in Year X, the economy takes a nosedive—perhaps because, too faithful to the new amendment, Congress held spending in unduly tight rein the year before. Federal tax receipts plummet: what we thought would be $1.1 trillion end up at just $900 billion. Even if some appropriation bills encompassed within the budget's projected $1 trillion have yet to be passed and signed, the final sentence of Section 1 would prevent no anticipated appropriation measure from going forward as planned. After all, while those measures would cumulatively cause the expenditures in Year X to exceed the year's revenues, they would not cause "total expenditures for any year to exceed the expenditures in the budget for such year"—which is all that Section 1 commands."

Such unforseen instances as these would, in our opinion, continue to occur. As such definitional questions and issue as these are resolved (or unresolved), several exclusions, exceptions and special provisions will creep into the amendment, thus in the end, defeating the purposes of the amendment itself. Instead of forcing the budget discipline which the sponsors hope to emote, endless time and energy would be wasted in Congress and in the courts, attempting to end-run the interest of the amendment.

5. SUMMARY AND CONCLUSIONS

In conclusion, we wish to emphasize two major points:

(1) First, the conceptual and practical problems with balanced budget limitations in general, and with Senate Joint Resolution 1.. in particular, have been laid out above. The amendment is not a good one, and regardless of the merits of their goals, would not reach the ends which its proponents seek. The crucial issue, as we see it, is to instill the will, desire, and responsibility on the part of Congress to cut wasteful deficit spending and to continue to limit the relative growth of government spending. Trying to find a way to force such limitations without instilling the will, desire, and responsibility to behave in such a manner is ultimately a self defeating waste of time and energy.

---

[7] This is a common ploy. For instance, The National Tax Limitation Committee sometimes compares total tax revenues and/or total government spending to Personal Income, an even more unfair comparison than National Income since additional income items have been removed. Clearly ratios which seek to make the numerator as large as possible and the denominator as small as possible only serve to distort the true levels of government receipts and expenditures relative to total economic activity.

[8] Letter from L. H. Tribe to Birch Bayh dated Jan. 27, 1982.

(2) A number of suggestions have been made to produce greater fiscal restraint that involve taking less drastic steps than constitutional amendments. We have commented on the improvement initiated in the congressional budget process by the Congressional Budget and Impoundment Control Act of 1974. This basic act could be amended quite readily to bring about greater fiscal restraint. One suggestion, for example, has been made by Robert M. Hartman of the Brookings Institution. Hartman's proposal, and a somewhat similar proposal by the Congressional Budget Office, is that the concurrent resolutions now required in the budget process include spending and taxing limits for the two years following the budget year, as well as for the budget year under consideration.[9] This longer-term look at the budget would require congressional committees to consider certain aspects of the budget (such as "controllability") that might be avoided by looking at the budget process one year at a time.

As a concluding comment on this aspect of budget reform, we agree with the following statement by Bruce K. MacLaury of the Brookings Institution:

"The congressional budget process has already generated tension among members and committees as its constraints have taken hold. Out-year limits would add new pressures. However, it is much more appropriate to nudge Congress toward greater fiscal responsibility in this orderly way than to create a straitjacket that renders fiscal policy impotent as an economic policy tool or encourages subterfuge that would make a mockery of a constitutional amendment." [10]

Prepared Statement of Dr. Robert G. Crawford

My remarks today are on the value of the constitutional limits on taxes in general and the specific features such a constitutional limit must have if it is to be effective. Limits on the spending and taxing ability of government at all levels (the federal level specifically) must be in the form of a rule that can be enforced effectively. The customary form for America is constitutional rule and S.J. Res. 126 is a proposed amendment to the constitution attempting to establish an appropriate rule.

At present, the incentive to which all politicians respond is the incentive to spend. No politician has been successful at limiting spending by himself and no "limited spending" coalition of politicians has yet formed. Those few who have been elected on the promise of limiting spending have been ineffectual. The political incentives require elected representatives to continually do more for their constituents. Incumbents run on their record, what they have done for their constituents. Most of the things they have done, that count, are positively correlated with expenditures.

Challengers run because incumbents haven't done enough. The challenger promises to do more. The promises may not overtly be promises to spend more when elected (as evidence see the LTV ad in the WSJ, Tuesday, Feb. 19, 1980), but if they seek to establish a track record, the record will show significant expenditures. The flaw is not in the characters of elected representatives. With few exceptions, elected government officials are as highly principled as any of their constituents. The flaw is in the system which makes it extremely difficult for any elected representative to repeat himself in office unless he becomes a big spender, and even worse, a big spender who can make it appear as though taxpayers do not have to pay. Only a constitutional rule can change this undesirable behavior of elected officials because only a rule can change the incentives to which elected officials respond.

One specific advantage of a constitutional amendment establishing a rule on fiscal behavior is the information it provides to voters in the political market. Increasing information available to agents participating in economic markets improves the efficiency of those markets and increases the welfare of participating agents. Fewer mistakes are made; better choices are made. Many major decisions are made on the basis of expectations about the future and better information improves the quality of expectations, resulting in fewer undesirable surprises. An amendment limiting tax receipts as a proportion of national income and requiring a balanced budget will significantly increase the information available to participants in the political market, improving the market. Given some ex-

---

[9] Robert W. Hartman, "Kemp-Roth and All That," Taxing and Spending, vol. 2 (February 1979), pp. 12-18.

[10] Joseph A. Pechman, ed., "Setting National Priorities: The 1980 Budget," Washington: Brookings Institution, 1979, p. 258.

perience, voters can correlate the "state of the economy" with specific tax receipt/national income ratios. Every political candidate's philosophical views on government spending can then be conveniently expressed as a simple percent and evaluation of those views will be less complicated. Also, once elected, any change in a candidate's views will be difficult to disguise. The debate and vote on changes in the limitations established by the amendment will be well publicized. Hence, the meaning of a given "yea" or "nay" is unambiguous. Every candidate's views on the appropriate proportion of national income to be taxed, and their voting record on changing that ratio or the balance of the budget increases information in the political market improving its functioning.

The importance of expectations and the way information is used to form expectations is fundamental to the performance of economic markets. This connection, given the rubric "rational expectations" in economic theory, has generated an important new appraisal of discretionary economic policy. Information and expectations are as important to voters in political markets as they are for consumers in economic markets.

My support for an amendment limiting tax receipts and requiring a balanced budget follows from my belief that it will increase the flow of useful information to voters as it reduces the incentives of elected officials to create inflation. An effective amendment will result in a level of tax receipts explicitly and directly determined by elected representatives who can be knowingly judged by those who pay the taxes. Tax receipts will no longer be indirectly determined by those same elected representatives via the current system with its pro-spending incentives. The hidden tax or invisible tax of inflation is not an effective check on spending since most voters do not realize that monetary financing of planned budget deficits results in inflation, an indirect tax. To most, inflation remains the one mythical dragon St. George has always promised to slay but never has. In every recent presidential election campaign, St. Georges have trampled the land making similar promises only because voters believe they just might deliver some day, but they never have.

Voters have not objected to consistent failure because most of them have benefited from inflation. We have benefited to this point because inflation has primarily been unanticipated and economists have long known that unanticipated inflation always results in a wealth transfer from net monetary creditors to debtors. Let me point out here that the government is the largest monetary debtor in the nation. I have been a net monetary debtor for the fourteen years I have been married. I'm only half kidding when I tell my students the way to solve the inflation dilemma is to get as big a debt as they can finance and pray for inflation.

But when inflation ceases to be viewed an aberration and becomes anticipated the wealth transfer stops. Then lower-gains-from-trade because of the increased cost of trade will reduce the wealth and welfare of everyone. That time has arrived. Soon even we will begin to suffer. The real suffering we are reaping now from perverse incentives in part of the American political system might, if left unchecked, lead us to mistakenly reject the whole political system of freedom and democracy, not violently and suddenly but gradually and inadvertently.

The decade of the seventies has been the full bloom period of the flower of activist government intervention in the economy, planted at the turn of the century and prodigiously cultivated and fertilized during the decade of the thirties. The inherent stability of markets came under attack. The assumed instability of markets is now unquestioned. Government attempts to stabilize the economy achieved the status of necessity. Government intervention to stabilize the economy faced its most rigorous tests in the post war decades. The sixties and seventies were decades of steadily increasing intervention; with steadily decreasing results. In periods of boom and recession, deficits were incurred in nineteen of twenty years. Severe inflation problems were not encountered until the decade of the seventies because serious supply shocks to the economy were not encountered. In the presence of negative supply shocks, budget deficits stimulated aggregate demand when effective stabilization policy required a reduction. Such a perverse fiscal policy occurred, as the federal budget has progressively revealed, because budget makers lost their focus of stabilization in favor of spending regardless of economic conditions, a rational response to current political incentives.

Now scapegoats are being sought for relief from the political stigma inflation has become. The most recent scapegoats are OPEC oil prices and consumer debt and declining private saving.

Declining measured savings in the form of lower holdings of financial instruments, and increased consumer debt are rational responses to inflation as con-

sumers attempt to obtain the wealth transfers debtors receive from inflation. Neither are a cause of inflation. They are both symptoms.

Oil prices are a contributor to inflation as a negative supply shock—but not one that anti-inflation policy can manage. Even in a world of no inflation, oil prices would rise because of the special features of oil as an exhaustible resource asset. As a valuable asset, oil is worth holding only if it yields a positive rate of return equal to the opportunity cost of investing. This opportunity cost can conveniently be thought of as the return to holding other real assets. But the return to oil only comes in the form of higher future prices—and in equilibrium the prices must rise at a nominal rate sufficient to generate a real return equal to the real rate of interest, say 2 percent. Thus, if inflation is 10 percent, oil prices should rise at the annual rate of 12 percent in equilibrium if oil is to be an asset worth holding. If prices were not expected to rise that fast, oil would not be worth holding and oil stocks would be reduced until, given the demad for future uses of oil, the price would rise at the equilibrium rate. Basic capital theory implies that it is the future value of oil which determines its present price. Given the demand for oil, the future value is basically determined by the expectation of how fast substitutes for oil will become commercially feasible.

It is changes in this expectation about future substitutes that has caused the structural change in the level of oil prices since 1972. Oil producers realized then substitutes that were expected to gradually replace oil in the eighties and nineties of this century would be delayed at least a decade. Existing oil stocks would have to be stretched a decade longer than formerly thought by both users and producers. Thus, oil owners could increase their wealth if they held oil off the current market in favor of selling it in the future. More oil can be held for the future only if it is bid away from current use by higher present prices. These higher present prices are determined as the present value of the expected future price. It is expectations about the future value which determine the present price. OPEC price increases are thus not the result of cartel behavior. If supportive general market forces were not present, high oil prices could not be sustained. In the short run the prices will be higher than they will be in the long run. In the long run users will find ways to substitute away from oil. The elasticity of demand is always greater in the long run than in the short run. This adjustment behavior has been delayed by government price controls and continual rhetoric indicating that oil prices are presently an unnatural result of a greedy cartel. As consumers begin to see the fraud in both acts, they will reluctantly adjust their behavior to permanently higher prices. This adjustment will put downward pressure on oil prices.

The point of this brief discussion is that the change in oil prices is a real relative price change and as such it should not be used in indices designed to measure inflation for policy purposes. Inflation is a monetary phenomena and weighting energy prices so heavily in indices implies inflation is viewed as a real phenomena and such a view generates a lot of nonsensical rhetoric, even from economists. (I include as an appendix to this discussion a brief note I previously wrote on the issue.)

S.J. Res. 126 requires, as I understand it:

1a. planned expenditures equal planned tax receipts unless a specific vote otherwise.

1b. actual expenditures cannot exceed planned expenditures unless a specific vote otherwise.

1c. planned tax receipts in any year as a proportion of National Income cannot exceed the proportion of the previous year unless a specific vote otherwise.

Since planned balanced budget is required and not a balanced actual budget, unless voted otherwise, the budget will have mild automatic countercyclical features. Such a feature of the federal budget is highly desirable. The claim that a balanced planned budget is too restrictive because it does not allow for discretionary countercyclical stabilization policy is a valid claim but not an objection to Senate Joint Resolution 126. The current process has always allowed for discretionary countercyclical policy. However, the past has never been the realization of countercyclical policy resulting from that budget process. Nineteen out of twenty budgets have been in deficit, in boom and slump. There is little countercyclical about such a track record of discretionary policy. Recent "rational expectations" research in economics, specifically taking into account the expectations of economic agents, indicates discretionary stabilization attempts will be effective only if they are unanticipated. Otherwise they will be ineffective or else actively destabilising. It is difficult for planned budget deficits to be unanticipated! While the results of rational expectations research are still tentative, they do

suggest skepticism as a responsible attitude towards discretionary stabilization policy, especially given its recent practice. The current amendment does not rule out discretionary countercyclical budgets—it just rules out such budgets that cannot receive support through a specific vote in the Congress. Thus the main strength of the amendment is the requirement of explicit action on the part of elected representatives thus increasing the information available to voters. The Congress always will do what it wants but it will be required to do it openly and directly and hence will be directly accountable to those who end up paying the bills.

The first two sections of the amendment mean the budget becomes a legitimate constraint on the spending desires of individual interests instead of the accumulation of individual spending desires. The escape clauses mean the budget will not hamstring the nation in times of genuine emergency. Having such an amendment as Senate Joint Resolution 126 improves the democratic budget process without dictating the result of such a process. It will have positive effects on the welfare of the nation.

blank page

APPENDIX

Additional Material Submitted for the Record

Executive Office of the President,
Office of Management and Budget,
Washington, D.C., February 28, 1980.

Hon. Birch Bayh,
Chairman, Subcommittee on the Constitution,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

Dear Senator Bayh: This is in response to your request for an analysis of the budgetary and fiscal impact of S.J. Res. 126, currently before the Senate Judiciary Committee.

S.J. Res. 126 would amend the Constitution of the United States in an attempt to promote fiscal responsibility by requiring a balanced Federal budget and limiting the growth of revenues. The Administration strongly favors a balanced Federal budget and reducing tax burdens as national security, energy security, and economic conditions permit. However, these goals can be accomplished within the context of the budget procedures of the Administration and the Congress without the serious problems raised by a Constitutional amendment.

We attach a staff report discussing the fiscal and budgetary impacts of the proposed amendment. We are very concerned about the restrictions this amendment would put upon fiscal policy and on the ability of the Federal Government to respond to emerging national problems. The revenue limitation would force major undesirable changes in the structure of our tax system and would be extremely difficult, if not impossible, to administer. Finally, the amendment raises issues and contains concepts and terminology that are inappropriate for inclusion in the Constitution.

In short, we believe that the Constitutional amendment proposed in S.J. Res. 126 would be extremely unwise with respect to both fiscal policy and budgetary policy. We urge that it not be favorably reported or proposed for ratification.

Sincerely,

James T. McIntyre, Jr.,
Director, Office of Management and Budget.
G. William Miller,
Secretary of the Treasury.

Analysis of S.J. Res. 126

S.J. Res. 126 would amend the Constitution of the United States in an attempt to promote fiscal responsibility by requiring a balanced Federal budget and limiting the growth of revenues. The Administration strongly favors a balanced Federal budget when national security, energy security, and economic conditions permit. However, these goals can be accomplished within the context of the budget procedures of the Administration an the Congress without the serious problems raised by a Constitutional amendment. The Constitutional amendment proposed in S.J. Res. 126 would be extremely unwise with respect to both budgetary policy and economic policy.

One of the great virtues of the Constitution is its continuing relevance as the fundamental instrument of our government after nearly 200 years. The Constitution has retained its vitality and relevance because it has not been excessively encumbered by concepts, terminology and provisions that change with the passage of time. S.J. Res. 126 is replete with concepts which are continuously changing and

which are inappropriate for the Constitution. We should strongly resist enshrining terms such as "national income," "Federal Government expenditures" and the like in the Constitution.

FISCAL IMPACT

S.J. Res. 126 is objectionable because of the damage it would inflict upon the Federal Government's flexibility to conduct fiscal policy. If the Congress did not override the balanced budget provision when the economy was weak, recessions could be deepened or turned into full-scale depressions.

At present there are a number of "automatic stabilisers" in the Federal budget. These programs, which include unemployment insurance, food stamps, AFDC and Social Security, and the progressive tax structure, play a major role in limiting cyclical movements in the economy. S.J. Res. 126 would require the Congress to take offsetting, procyclical, and destabilising actions when these automatic stabilisers went into effect, unless these offsetting actions were avoided by a controversial and time-consuming three-fifths vote of each House of the Congress. The automatic stabilisers now have the advantage of automaticity and timeliness. This proposal would make them subject to delays that would reduce their effectiveness, or make their effects perverse. The result would surely be more cyclical instability in the economy. This constraint on fiscal policy would also tend to place an unduly heavy burden on monetary policy, with the potential for excessive monetary growth in the long-term.

Simulations with several macroeconomic models indicate that, had the unrealistically large cuts required to approximate a balanced budget been made in FY 1975 and in FY 1976, the unemployment rate would have been about 12 percent in 1975, almost half again as high as the rate that was actually experienced. Absolute budgetary balance would not have been achieved without causing a deeper recession. While the balanced budget requirement in S.J. Res. 126 does not actually mandate balance after the fact, it would push the economy in the direction of higher cyclical unemployment.

Failure to override the provisions of both Sections 1 and 2 would severely circumscribe the role of government in many areas. The amendment would tend to reduce the share of Federal receipts and spending continually over time and, with rising real defense spending, put intense pressure on many or most domestic programs. Of course, it is impossible to predict what programs would be reduced or eliminated to meet the restriction, but major cuts would have to be made. There would be great pressures to shift the burden of Government to the States and localities by curtailing grant programs. It would also be difficult to respond to the need for Federal Government services that the rising proportion of the elderly in our population will inevitably raise in the future. In particular, it would become exceptionally difficult to maintain adequate retirement and health programs if the limitations intended by this amendment were kept in place.

BUDGETARY IMPACT

S.J. Res. 126 requires that a projected Federal budget deficit be permitted only after approval by a three-fifths majority vote in each House. The terminology of this section is ambiguous. It refers to "expenditures," a term from the national income and product accounts, which differ from outlays, the spending term currently in use in Federal Government budgeting. It also refers to appropriations bills affecting expenditures, although appropriations bills typically refer only to budget authority and not to outlays in any specific year. They never refer to "expenditures."

S.J. Res. 126 would almost inevitably create strong pressures to produce spurious budget surpluses by changing budgetary definitions and practice, including moving programs off the budget. The Congress many times in the past has changed the way that certain items are treated in the budget, and many ambiguous and controversial conventions still remain. Even though the Resolution attempts to sidestep these definitional issues by providing that definitions in effect at the time the amendment goes to the States for ratification be preserved, it would increase the already strong incentives for evasion of current budget definitions and practices. If the Congress were to change budgetary procedures, in an attempt to circumvent the limitation, the courts would be forced to decide whether to acquiesce or to confront the Congress on legislated definitions of budget concepts. There is a need to change these definitions from time to time to reflect changing

circumstances; the Judiciary is not the appropriate branch of government to resolve these issues.

S.J. Res. 126 would also create strong pressure for the government to resort to instruments which may be inefficient, but which do not involve budget outlays. In particular, loan guarantees and loan subsidies would be used to reduce immediate budget outlays to an even greater extent than at present, potentially causing additional uncontrollable outlays in the future. Similarly, inflationary and productivity-reducing government regulations would be substituted for spending programs in a number of areas. The probable effect of these changes would be to reduce the efficiency of the economy without actually reducing the role of government.

The provision of a balanced budget in S.J. Res. 126 is also likely to create false and unrealistic expectations. Passing a concurrent resolution projecting a balanced budget would probably satisfy the requirement the amendment would place upon the Congress. However, the actual surplus or deficit later realized in the budget will depend critically upon whether the economy performs in the manner assumed in the budget resolution and whether receipts and uncontrollable outlays have been correctly estimated. Large deficits could emerge without any change in tax or spending policy if the economy performs worse than assumed.

Projecting the required budget balance raises two problems. It would create strong pressures to make unduly optimistic economic forecasts which would raise estimated receipts and reduce estimated outlays. At best economic forecasting is a very inexact art; this provision would also make it a much more political one.

It is also likely that this amendment would be viewed as guaranteeing a balanced budget. Expectations of a balanced budget would be raised that in all probability could not be satisfied in years when the economy was weak.

Section 2 of S.J. Res. 126, relating to receipts, raises further problems. It appears impossible to administer, and would require a set of tax laws radically different from those now in place. Section 2 requires that receipts as a proportion of national income not exceed that of the prior year without enactment of a bill involving a roll call vote of each House. However, unlike Section 1 which is prospective, Section 2 is retrospective, requiring the Congress to control actual realized receipts, not just estimated receipts. In effect, the Congress would be required to know both actual receipts and actual national income in advance of the time that they can be known. While a final accounting of receipts is normally available within a few weeks after the end of a fiscal year, national income estimates are quite another matter. Under current procedures, estimates of national income are changed periodically as new information becomes available. Data from tax returns and census data provide information for revisions in the estimates of national income for several years after the period has passed.

If the amendment should be found to give taxpayers standing to sue the Federal Government for return of unconstitutional tax collections when congressional estimates of either receipts or national income turn out to have been in error, there would clearly be the potential for a large volume of litigation. The practical effect of the amendment, in order to avoid such consequences, would be to require a tax structure designed to produce receipts in each year well below the limiting proportion of national income set in the prior year. If Section 2 were not overridden, there would be a continuous decline in the share of receipts, and spending, in national income. The logical intent of the amendment would appear to be the withering away of the Federal budget.

The design of a tax system, which yield receipts which do not increase as a fraction of national income in the absence of legislated adjustments, would require many changes from our present tax system. In particular, it would be difficult to maintain a progressive rate structure without adopting some system that maintained constant average tax rates as national income changes. However, it is not clear that a method of making such adjustments which is efficient and equitable can be devised. In particular, such changes raise serious and complex questions with respect to the definition of income, and specifically the measurement of real income from capital, which are better addressed through the present system of ad hoc legislated adjustments of the tax system.

In short, S.J. Res. 126, while responding to political presures of the moment, would be bad policy. It encumbers the Constitution. It is ambiguous. It raises false expectations. It cannot be effectively administered. It would force the Federal Government to deceptive budgetary devices and inefficient policy instruments. It would impair fiscal policy. And it might preclude the Federal Government from providing services that are needed.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., March 7, 1980.

HON. BIRCH BAYH,
Chairman, Subcommittee on the Constitution,
Senate Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to respond to your request for a Congressional Budget Office study of the fiscal and budgetary impact of S.J. Res. 126.

At your request, CBO conducted the attached study under two separate assumptions: (1) that the Congress would not override either the no deficit or the revenue limitation provision of S.J. Res. 126; and (2) that the Congress would not invoke the override procedure for the balanced budget provision, but would annually pass a law overriding the revenue limitation procedure.

Using recent economic history and the most commonly accepted macroeconomic approach as guides, the Congressional Budget Office believes that if S.J. Res. 126 were implemented, unemployment would be higher and inflation lower, on the average. Because of the temporary nature of the fiscal effect on employment and the permanence of the effect on inflation, the longer the time period over which the average is taken, the smaller the unemployment effect and the larger the inflation effect. Should S.J. Res. 126 successfully prohibit annual expenditures from exceeding tax revenues, disturbances to the economy would generate business cycles of substantially greater intensity and duration. The potential for the federal budget to act as an independent source of economic instability would, however, be reduced.

The revenue limitation provision of S.J. Res. 126, if not overriden, could require very large cuts in expenditures, particularly during recessions. If S.J. 216 had been implemented in 1971, for example, its revenue limitation coupled with its prohibition of deficits would have required that the Congress cut over $40 billion dollars of expenditures during the height of the 1974–1975 recession.

Finally, S.J. Res. 126 by itself does not guarantee that, at the end of the fiscal year, expenditures will not exceed revenues. S.J. Res. 126 applies to the Congress' planned budget. But the levels of expenditures and revenues in that budget are estimates that are highly sensitive to economic assumptions. Thus, the Congress would still need a budget process to fulfill the intent of the frames of S.J. Res. 126.

We will be happy to provide your Committee with any additional help or information that you might require as you deliberate this important topic.

Sincerely,

ALICE M. RIVLIN, *Director.*

Enclosures.

ANALYSIS OF THE POTENTIAL ECONOMIC AND BUDGETARY EFFECTS OF S.J. RES. 126

PROVISIONS OF S.J. RES. 126

S.J. Res. 126 is a proposed Constitutional amendment that would prohibit planned deficits and would control the growth of the federal budget by limiting federal revenue to a percentage of national income. Specifically S.J. Res. 126 would require that:

The Congress adopt a budget each year;

The planned expenditures of such a budget cannot exceed planned revenues unless waived;

This prohibition against planned deficits can be waived by three-fifths votes in both Houses in time of peace or by majority votes in each House when a declaration of war is in effect;

The Congress shall not pass and the President shall not sign any appropriation bill which would cause total expenditures for any year to exceed the expenditures in the budget for such a year;

The receipts in any fiscal year cannot exceed, as a proportion of the national income that collected in the previous fiscal year.

This limitation on receipts may be waived by the passage of a law; and

The terms used in S.J. Res. 126 shall be construed in accordance with their meanings on the date on which the amendment is submitted to the States for ratification.

ASSUMPTIONS

At Senator Bayh's request the potential economic effect of S.J. Res. 126 has been analyzed under the assumption that the no deficit provision of the amendment is not waived by the Congress. Senator Bayh requested that the budgetary effect of the amendment be examined under two assumptions: that the revenue limitation provision is never waived by the Congress and that it is waived by the Congress every year.

The budgetary terms in S.J. Res. 126 are assumed to have their present meaning. That is:

The term expenditures is the equivalent of outlays;

Total expenditures and receipts of the United States equal the outlays and receipts of the unified budget plus off-budget outlays;

Appropriation bills refer to legislation under the jurisdiction of the Appropriations Committees.

This analysis is conducted under the assumption that, if implemented, S.J. Res. 126 would prevent federal expenditures (outlays) from exceeding revenues. This is not necessarily the case. S.J. Res. 126 mandates that the Congress budget be in balance or in surplus. But in that budget, which under current law must be adopted before the beginning of the fiscal year, the levels of expenditures and revenues are estimates of outlays and receipts.

The Congress does not directly control the levels of outlays or revenues. On the expenditure side, the Congress grants budget authority. This authority allows Executive Branch to enter into obligations. When the obligations are due, the Treasury writes checks. A given budget's outlays are the amount of checks issued plus some additional payments (such as interest accrued on most public debt) over accounting period called the fiscal year.

In any given fiscal year, the level of outlays can differ from that of budget authority for two major reasons. First, the Congress has chosen to vote permanent and/or open-ended grants of budget authority for many programs—particularly for entitlements such as Social Security, unemployment assistance, and federal employee retirement, and for some fixed costs such as interest on the public debt. The actual levels of expenditures for these programs, which made up 58.0 percent of the fiscal year 1979 outlays, are determined by the interaction of the program rules which are set out in the basic authorizing statutes, with economic and demographic forces.

When the Congress passes budget resolutions, therefore, the level of outlays for these programs in the resolutions are estimates. Whether the estimates are accurate depends on the accuracy of the budget's economic and programmatic assumptions.

Second, Congressional control over outlays is further weakened because much of the new budget authority that is granted in any year is not spent (and thus turned into outlays) until several years into the future. Thus, 32.1 percent of the new budget authority requested by President Carter in his 1980 budget will be spent in future years, and 23.3 percent of the President's outlay estimate for fiscal year 1980 result from grants of budget authority made in prior years.

In a similar fashion the level of receipts in the Congress's budget are estimates. The Congress enacts tax rules that interact with the economy to produce a certain level of receipts. The actual level of receipts in any given year is highly sensitive to changes in the economy. Thus, the ability of the Congress to control the level of revenues is also dependent on the quality of its economic forecasting.

S.J. Res. 126 does require that the Congress cannot pass and the President cannot sign any appropriation bill that would cause total outlays for any year to exceed total revenues. It is possible, however, that economic changes could occur after the passage of all appropriations bills that would result in a large deficit. Currently, for example, the Congress faces the prospect of either invoking the budget process's reconciliation procedure or adjusting the ceilings and floors of the Second Concurrent Budget Resolution for Fiscal Year 1980. The Congress faces this difficult choice not so much because it has made policy changes but because the economic forecast which was associated with the second resolution proved to be incorrect, in that inflation and interest rates have been higher than anticipated.

Similar situations could occur even if S.J. Res. 126 was part of the Constitution. The proposed amendment is not self-enforcing. The Congress would still need a budget process. For purposes of this analysis, however, CBO has assumed that the intent of the framers of S.J. Res. 126—that outlays not exceed receipts—actually occurs.

EFFECTS OF S.J. RES. 126 ON THE ECONOMY

The balanced budget rule of S.J. Res. 126 would lead to a major structural change in the American economy. Clearly there are situations in which a balance or surplus in the federal budget would be preferrable to a deficit. A market economy does not, however, automatically maintain high levels of employment and output or stable prices. Waves of consumer and investor optimism and pessimism, immoderate weather, supply interruptions from abroad, and labor unrest, among other causes, subject the economy to a various disturbances, some of them may, if not offset by fiscal policy changes, lead to a sequence of unsustainable booms and deep recessions.

Because the federal budget is affected by and also affects the economy, it can be used to moderate these economic cycles. When the economy slides into recession, the budget registers a decline in tax revenues (because of lower incomes), an increase in outlays (for income maintenance such as unemployment compensation) and a bigger deficit (because revenues are lower and outlays are higher). But that is not the end of the story. By further cutting taxes and increasing spending, government can, in time, induce people to raise their levels of spending and thereby counter the economy's recessionary tendency. Similarly, a booming economy raises tax revenues, lowers government spending, and reduces the federal deficit (or increases the surplus). By raising taxes and cutting expenditures, government can—after a lag—reduce the level of private spending and temper the runaway pace of economic activity.

Because of the feedback effect of the budget on the economy in time of economic downturn, the automatic increase in the deficit will moderate the recession. Likewise when a booming, inflationary economy is moving the budget into substantial surplus, a surplus is more conducive to economic stability than a balanced budget. If the boom or recession outlives the lag in the effects of the budget on the economy, tax and spending changes which increase the surplus (in boom) or deficit (in recession) would be stabilizing. Budget changes intended to balance the budget would at such times increase the intensity of the boom or recession.

By the same token, however, fiscal policy changes which increase the deficit during high employment and decrease the deficit during recession could make inflation more severe in the first case and deepen the recession, in the other, than would be true with an annually balanced budget.

At times the Congress has chosen to offset economic fluctuations with budget policy. At other times, however, budgets have been adopted that have exacerbated the country's economic problems. The Congress at present has the flexibility to choose any type of budget, some more pro-cyclical and some more counter-cyclical than balanced ones. Adoption of S.J. Res. 126 would reflect a decision to forego countercyclical budgets in order to avoid adopting pro-cyclical ones. As such it reflects a belief that the Congress too often has adopted pro-cyclical fiscal policies.

It is possible to gain some understanding of the potential impact of S.J. Res. 126 by examining what would have happened if the federal budget had been consistently balanced over the last decade. Some of the successes and failures of recent fiscal policy have identified in a study by the Staff of the Joint Economic Committee in collaboration with Wharton Econometric Forecasting Associates.[1] That study asked: What would have happened to the economy if an annually balanced budget policy had been followed over the period 1965–1974?[2] The historical interval is divided into three subperiods: 1965:3 (third quarter, 1965) to 1969:2, 1969:3 to 1972:2; and 1972:3 to 1974:2. The first two of the subperiods are especially illustrative of some of the economic stability gains and losses, respectively, arising from a balanced budget rule.

BALANCED BUDGETS DURING HIGH EMPLOYMENT, 1965–1969

As may be seen in lines 1 and 2 of Table 1, until the policy reversal of 1969 this period was marked by rapidly increasing deficits that increased aggregate demand and contributed to a decline in the unemployment rate to levels not reached since the early 1950s. As a consequence, inflation, which had been quite subdued since the mid-1950s, doubled between 1965 and 1969. The 1969 December-over-December increase in the Consumer Price Index was the highest in 20 years.

---

[1] U.S. Congress, Joint Economic Committee, *The Economic Impact of Alternative Fiscal Policies*, Studies in Fiscal Policy, 1, August 18, 1976.

[2] Two other policy options were also evaluated: balancing the full employment budget and a variable discretionary policy based on changes "which economists might have regarded as reasonable at the time." The study finds that, because the full employment budget was actually close to balance over the period, a policy of full employment balance would not have made much difference. The "experimental" discretionary policy was found to have been "significantly better than the policy actually pursued" in some cases.

In an attempt to slow down the boom, an income tax surcharge was adopted in June 1968 and the Federal Reserve sharply tightened monetary policy during 1969. The result was the recession of 1969–1970.

TABLE 1.—FEDERAL BUDGET DEFICITS AND UNEMPLOYMENT RATES (ACTUAL AND SIMULATED) IN FISCAL YEARS 1966–69

	1966	1967	1968	1969
Deficit (billions of dollars)	3.8	8.7	25.1	[1] (3.2)
Unemployment rate (percent):				
Actual (base solution)	4.1	3.8	3.8	3.4
With budget balance:				
Purchases	4.1	5.2	6.7	4.1
Taxes	4.1	3.9	4.3	4.1
Inflation rate: GNP deflator (percent):				
Actual (base solution)	3.1	3.0	4.2	4.8
With budget balance:				
Purchases	3.2	3.2	4.3	4.1
Taxes	3.2	3.2	4.4	4.5

[1] Surplus.

Source: Wharton Econometric Forecasting Associates.

A balanced budget rule applied during this period would have been more consistent with economic stability than the budgets actually adopted. Lines 3 and 4 of Table 1 support this position. Line 3 indicates the Wharton Model's estimate of the unemployment path that would have resulted from a policy of balancing the budget by reducing federal purchases in 1966–68 and by increasing expenditures in 1969. Line 4 shows the estimated effect on unemployment of achieving budget balance through tax changes. Both approaches to budget balance would have significantly limited the decline in the unemployment rate. The value of a balanced budget rule in this case is that it would have avoided excessive fiscal stimulus, moderated aggregate demand, restrained the rate of inflation,[3] and permitted the adoption of more moderately restrictive policies in 1968–1969. The 1969–1970 slowdown could, therefore, have been milder or avoided altogether.[4]

BALANCED BUDGETS DURING RECESSION AND RECOVERY, 1970–1972

Implementing a balanced budget rule in fiscal year 1971 and adhering to it in 1972 would have substantially increased unemployment. Even if the numbers in lines 3 and 4 of Table 2 are overestimates, it is clear that raising taxes and reducing expenditures are the required moves to balance the budget during recession; this makes the recession worse, and—in this simulation—without lowering the inflation rate.

TABLE 2.—FEDERAL BUDGET DEFICITS AND UNEMPLOYMENT RATES (ACTUAL AND SIMULATED) IN FISCAL YEARS 1970–72

	1970	1971	1972
Deficit (billions of dollars)	2.8	23.0	23.4
Unemployment rate (percent):			
Actual (base solution)	4.0	5.7	5.9
With budget balance:			
Purchases	4.0	8.5	8.7
Taxes	4.0	6.1	6.9
Inflation rate: GNP deflator (percent):			
Actual (base solution)	5.1	4.6	3.1
With budget balance:			
Purchases	4.0	[1] 2.5	[1] 0.7
Taxes	5.2	5.4	4.0

[1] These inflation impact estimates are implausible. See footnote 3.

Source: Wharton Econometric Forecasting Associates.

[3] The Wharton simulations show only a modest improvement in inflation with a tax-adjusted balanced budget: 4.5 percent inflation in 1969 versus 4.8 percent in the base solution. However, the Wharton model used in this simulation has the property that one of the principal effects of a decline in aggregate demand is to lower labor productivity and raise prices. This property is not shared by most other large models. On average, these other models indicate that a 1¼ percentage point higher unemployment rate for three years (roughly corresponding to the purchases balance option) would have reduced inflation by about 2 percentage points by the end of the period—or to 2¾ percent by 1969.

[4] The JEC study does not draw any connection between the growing deficits, falling unemployment, accelerating inflation, and the subsequent need for restrictive policy. In fact, in the variable discretionary policy experiments, policies are selected that result in unemployment of 3.4 to 3.5 percent in 1969.

best copy available

Of course, proponents of a balanced budget rule would protest that if such a rule had been in force during 1966–1969, there need not have been a recession of 1969–1970 or a rise in unemployment in 1971–1972. One can agree that it is unfair to ask what the consequences of a balanced budget would be in a situation that would have been much different with a policy of budget balance. At the same time, one must recognize the existence of cases where the attempt to force tax revenues to equal outlays will magnify economic disturbances. History has shown that events other than ill-designed fiscal policy can cause and/or aggravate an economic downturn. And the message of these simulations with large econometric models is that, once in a recession, mandating the attempt to balance the budget will deepen the downturn.

A BALANCED BUDGET IN 1974–1977: DRI ESTIMATES

One of those occasions when a balanced budget rule would have clearly magnified an economic disturbance occurred after the OPEC/agriculture shock to the economy in late 1973. Estimates of the effect of annually balanced budgets on unemployment, according to one version of the Data Resources, Inc., model, are shown in Table 3. As may be seen, a balanced budget rule is estimated to increase the unemployment rate by over 3.5 percentage points in both 1975 and 1976. In addition, the recovery would have been delayed a year.

TABLE 3.—UNEMPLOYMENT RATES (ACTUAL AND SIMULATED) IN CALENDAR YEARS 1974–77

	1974	1975	1976	1977
Unemployment (percent):				
Actual	5.6	8.5	7.7	7.0
Simulated with balanced budget	6.0	11.2	11.3	9.1
Inflation rate: GNP deflator (percent):				
Actual	9.7	9.6	5.7	5.9
Simulated with balanced budget	9.9	8.6	2.9	3.3

Source: Data Resources, Inc.

The price effects of such a policy would have been salutory, however. With annually balanced budgets beginning in 1972, the rate of inflation would have been below 6 percent in 1978, according to DRI estimates. The actual rate in 1978 was 7.7 percent, on a year-over-year basis.

BIAS IN UNCONSTRAINED BUDGETING

Advocates of balanced budget rules do not base their case exclusively on the demonstration that, in some particular historical circumstances, a balanced budget would have been more consistent with macroeconomic stability than the budget actually adopted. They argue, more generally, that the politics of an unconstrained budget process is biased toward deficits and excessive fiscal stimulus.[5] Senators and Representatives find it in their interest and in the interests of their constituencies to "vote for every appropriation, for every tax cut, and against every tax." [6] These fiscally expansive pressures are all the more intense just prior to national elections.[7]

In fact, of the 22 federal budgets since 1957, 20 have been in deficit (the $3.3 billion surplus in 1960 and the $3.2 billion surplus in 1969 were the exceptions). A stabilizing fiscal policy—according to the critics—ought to record about as many surpluses as deficits.

Persistent deficits are thought to have adverse consequences for inflation, unemployment, and the productivity of the economy (output per unit of labor input).

DEFICITS, INFLATION, AND UNEMPLOYMENT

Deficits raise the level of aggregate demand above what it would have been with a balanced budget. An observed sequence of deficits means that for some

---

[5] J. M. Buchanan and R. E. Wagner, Democracy in Deficit: The Political Legacy of Lord Keynes (New York: Academic Press, 1977).
[6] Senator Russell Long, Congressional Record, April 28, 1977, s6878.
[7] Edmund R. Tufte, Political Control of the Economy (Princeton University Press, 1978).

time periods within or following those deficits, unemployment was lower and inflation was higher than it would have been with balanced budgets.

Persistent deficits are not, therefore, in and of themselves, undesirable on the grounds of their effect on employment and prices. One must go further and argue that the gains in employment are not worth the losses from inflation. One point in favor of this judgment is that the beneficial effects on employment from fiscal stimulus are much more shortlived than the effects on inflation.[1]

DEFICITS AND PRODUCTIVITY

If persistent deficits reduce the rate of investment, they can slow down the rate of growth of output per worker. Actually, deficits have two distinct, potentially offsetting effects on investment. First, by absorbing private savings, deficits leave fewer funds—at any given income level—for investments that increase productivity. In this way, Treasury borrowing to finance the deficit is said to "crowd out" private investment. Second, deficits increase aggregate demand above the balanced budget level, and increase income. As real income rises, people save more. It is possible that a deficit which raises income and the profitability of investment may result in a higher level of both saving and private investment. Thus, the financing of deficits tends to "crowd out" private investment, but the income effect of a deficit tends to "crowd in" private investment.

However, the potential for "crowding in" depends on the ability of the deficit to increase real income. When the economy is at high levels of employment, this potentiality disappears. During periods of high labor and capacity utilization, deficits are apt to "crowd out" investment and reduce productivity. During recessions, deficits are likely to "crowd in."

ECONOMIC PROSPECTIVES UNDER A BALANCED BUDGET CONSTRAINT

Using recent economic history and the orthodox macroeconomic model as guides, some qualitative statements about the likely future consequences of a balanced budget rule can be made.

Assuming that, in the absence of such a rule, fiscal flexibility would continue to favor deficits over surpluses, then unemployment would be higher and inflation lower, on average, with a balanced budget constraint.[2] Because of the temporary nature of the fiscal effect on employment and the permanence of the effect on inflation, the longer the time period over which the average is taken, the smaller the unemployment effect and the larger the inflation effect. Disturbances to the economy would generate business cycles of substantially greater intensity and duration than one would observe without the requirement that annual tax revenues equal annual expenditures. The potential for the budget to act as an independent source of economic instability would, however, be reduced.

EFFECTS OF S.J. RES. 126 ON THE SIZE OF THE FEDERAL BUDGET

As previously indicated, S.J. Res. 126 would provide that the revenue burden as a proportion of national income could not grow from one year to another unless a law was passed. If such a law was passed each year, S.J. Res. 126 would not necessarily prevent the size of the federal budget from rising indefinitely, even though it would be a balanced budget. Budget balances can be achieved by raising taxes as well as cutting outlays.

If, on the other hand, no such overriding law was passed, the revenue limitation provision coupled with the deficit prohibition would limit federal outlay growth. Table 4 contains estimates of what might have occurred during the 1970s if S.J. Res. 126 had been implemented during fiscal year 1971. The estimates in Table 4 were calculated under the assumptions that the Congress chose not to pass a law to override the revenue limit and that the actual national income figures of the 1970s were still achieved even though the federal budget was balanced during the period.

As indicated by the data in Table 4, the revenue limit of S.J. Res. 126 would have a much smaller potential impact on receipts than on outlays. If the amendment had been implemented in fiscal year 1971, the revenue limit would have been established when the tax burden was high by historical standards. Periodic

[1] Congressional Budget Office, Understanding Fiscal Policy, Washington, D.C. (April 1978), Chapter III.

[2] Under the converse assumption, that the unconstrained budget process in the future will tend toward surpluses, a balanced budget regime would raise inflation and lower unemployment.

pages tightly bound

tax cuts during the decade lowered the burden until fiscal year 1979. Thus, with the exception of this last year, revenues could have been raised without reaching the limit. Reveunes as a proportion of national income are currently at a post World War II high. Thus, if S.J. Res. 126 was implemented in the near future it might have little impact on revenue levels.

TABLE 4.—BUDGETARY EFFECT OF S.J. RES. 126 ON TOTAL REVENUES AND TOTAL OUTLAYS FOR FISCAL YEARS 1971–79, ASSUMING IMPLEMENTATION IN FISCAL YEAR 1971

[In billions of dollars]

	1971	1972	1973	1974	1975	1976	1977	1978	1979
Actual:									
Revenues	188.4	208.6	232.2	264.9	281.0	300.0	357.8	402.0	465.9
Outlays	211.4	232.0	247.1	271.1	334.2	373.7	411.4	461.2	508.1
Limiting amount 1970 proportion of revenues to national income[1]	188.4	222.1	248.8	272.2	296.9	319.7	364.8	411.2	464.3
Amount actual above (+) or below (−) limit:[2]									
Revenues	0	13.5	16.5	7.3	5.9	19.7	7.0	9.2	−1.6
Outlays	−23.0	−9.9	1.6	1.1	−47.3	−54.1	−46.6	−50.0	−43.8
National income, fiscal years	824.2	900.5	1,008.4	1,103.4	1,163.0	1,256.8	1,478.7	1,666.8	1,882.2
Memorandum: Actual revenues as a percent of fiscal year national income	24.7	22.9	23.2	23.9	24.0	24.2	23.2	24.2	24.8

[1] Revenues and outlays are limited to 24.7 percent of fiscal year national income—the percentage that fiscal year 1970 revenues were of fiscal year 1970 national income.
[2] Under the assumption that revenues and outlays rose to limit.

Because S.J. Res. 126 requires that total federal outlays not exceed total federal revenues, however, it could mandate large reductions in expenditures, particularly during recessions. A rise in the unemployment rate that is caused by a change in real economic growth can have a dramatic effect on the federal deficit. Should the unemployment rate be a percentage point higher in calendar year 1980, due to lower economic growth, than is currently forecast, revenues will decline by $20 to $22 billion in fiscal year 1981 and outlays will increase during this period by $5 to $7 billion. Thus, the deficit could increase by $25 to $29 billion in fiscal year 1981.

Because under S.J. Res. 126 outlays cannot exceed revenues, outlays must be reduced when receipts fall during a recession. Setting aside the macroeconomic implications of this requirement, the budgetary effects can be major. If S.J. Res. 126 had been in effect in the early 1970's, for example, an additional $1.1 billion could have been spent in fiscal year 1974 without reaching the amendment's limit. But, because of the severe 1974–1975 recession, the amendment's revenue limitation and no-deficit requirements would have required outlay reductions of at least $40.0 billion in fiscal year 1975. Most of this required reduction, moreover, would have been caused by the declining revenue limit rather than by additional countercyclical outlays.

By tying revenues (and, because of its deficit prohibition, outlays) to an estimate of national income, S.J. Res. 126 could create intense pressures on the budget committees and on organizations such as the Council of Economic Advisors and the Congressional Budget Office to produce optimistic national income estimates so that additional receipts could be collected and additional money spent. For example, in its forecasts of the economy for the Congress, CBO estimates a range of gross national product (GNP) and national income. The range, over which there can be reasonable disagreement, is usually plus or minus 4 percent around a midpoint estimate. If, for example, CBO had correctly estimated national income for fiscal year 1979 at $1,882.2 billion, the range would have been from $1,975.5 to $1,806.9 billion. But depending on which end of this range was used in applying the revenue limitation formula of S.J. Res. 126, the limit on total revenues and outlays could shift by $41.6 billion.[10]

[10] Under the assumption that S.J. Res. 126 was implemented in fiscal year 1971 and, thus, that revenues and outlays were limited to 24.7 percent of GNP.

Source.—Analysis of the fiscal and budgetary impact of S.J. Res. 126 prepared by the Congressional Budget Office, March 3, 1980.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., May 1979.

THE EFFECT OF CONSTITUTIONAL RESTRICTIONS ON STATE DEBT

(Allen Schick)

During the first months of the 96th Congress, numerous constitutional amendments have been introduced to require a balanced federal budget. While the various proposals differ in wording and detail, their common objective is to prohibit (or restrict) deficit spending by the Federal Government. Total federal expenditures would be limited to available revenues, thereby obviating the need for new long-term debt. The proposed amendments are thus similar in purpose to provisions in state constitutions which limit or bar borrowing by state governments. Many proponents of constitutional restrictions on the federal budget point to state constitutional limitations as evidence that American governments can be prevented from incurring debt by these kinds of limitations.

This brief report presents data on the indebtedness of state governments. Only long-term debt is included inasmuch as short-term indebtedness (less than one year's duration) might be permitted even if deficit spending were banned.

Although the constitutions of more than three-quarters of the states prohibit or restrict long-term indebtedness, the plain fact is that every state has incurred such debt. Table 1 shows the amount of long-term debt outstanding in each state as of June 30, 1977. The debt is divided into two categories: (1) general obligations for which the "full faith and credit" of the state is pledged; and (2) nonguaranteed debt, the payment of which usually is derived from specific revenues. The finding that no state has been completely stopped from borrowing by constitutional limitations has been noted by a number of scholars. In his compendious 1941 study of state debts, B. U. Ratchford commented that:

> "After a [constitutional] limitation has been imposed there are usually many attempts to evade or circumvent it. As the conditions which prompted the limitation recede into the background, there is frequently a tendency for these efforts to increase while the defense of the limitation weakens."[1]

Heins came to a similar conclusion in 1963, noting that

> "When constitutional restrictions stood in the way of borrowing for public purposes, state legislatures improvised methods of borrowing which were, hopefully, beyond constitutional bans. When courts, in the face of taxpayer suits, ruled debt proposals to be unconstitutional, state legislatures altered their proposals until they achieved the sanction of the courts."[2]

Constitutional restrictions have not stopped the issuance of debt because states subject to the limitations have developed financing procedures which circumvent the restrictions. One form of circumvention is to earmark state revenues to service the debt; another is to provide that the debt is to be secured by certain revenues but not by the full faith and credit of the state. After some resistence in the 19th century and early decades of the 20th century, state courts generally have adhered to the "special fund doctrine" under which revenue bonds are not deemed to be obligations of the state, and hence are not subject to constitutional limitations. In a leading case, the supreme court of North Carolina upheld a scheme in which the State issued "certificates of indebtedness" to be paid from the proceeds of the gasoline tax but with an additional guarantee of the full faith, credit, and taxing power of the state. In upholding this obviously circumventious arrangement, the South Carolina court reasoned that "this pledge of the faith, credit, and taxing power of the state is merely a pledge of honor, because the State cannot be sued for an enforcement thereof without its consent."[3]

Once this breach in the constitutional provision was sanctioned, South Carolina embarked on widespread earmarking of revenues for debt service to the extent that its constitutional "debt limitation has been completely nullified by court interpretation and legislative action."[4] Thus, half a dozen years after the landmark decision sanctioning special funds, the South Carolina Supreme Court declared: "This court has also held that bonds issued by the State which are pay-

---

[1] Ratchford, B. J., "American State Debts" (Duke University Press, 1971), p. 7.
[2] Heins, A. James, "Constitutional Restrictions Against State Debt" (The University of Wisconsin Press, 1963), p. 13.
[3] *State* v. *Mower*, 152 S.C. 327 (1929).
[4] Ratchford, op. cit., p. 424.

able out of special funds do not create debts of the State * * * although the full faith, credit, and taxing powers of the State * * * are pledged for payment of the same." [6]

Nonguaranteed bonds have proliferated as a means of evading state constitutional controls. In 1949, this special form of debt was only 15 percent of the total long-term indebtedness of state governments; at the present time, more than half of the outstanding debt of state governments lacks a full faith and credit guarantee. In fact, nonguaranteed debt exceeds full faith and credit obligations in 28 states, as the data in Table 1 shows. Nine states (such as Indiana, South Dakota, and Wyoming) rely exclusively on nonguaranteed debt.

There is a definite correlation between constitutional restrictions and recourse to revenue bonds and other forms of nonguaranteed debt. In states where the legislature is unfettered by constitutional restraints on borrowing, nonguaranteed debt amounts to less than one-third of total indebtedness; in states subject to constitutional limitations two-thirds of the debt is of the nonguaranteed variety.[8]

Because states have been able to evade constitutional controls by means of nonguaranteed debt, one analyst concludes that "governmental units with relatively restrictive debt limitations have issued just as much debt as less restricted or unrestricted units. Debt limitations have merely changed the composition and increased the cost of financing capital expenditure." [7]

The issuance of nonguaranteed debt represents much more than a shift in the form of indebtedness. Nonguaranteed obligations usually carry a lower credit rating than full faith and credit obligations, and therefore bear higher interest charges. Although they are not deemed by courts to be state debt, nonguaranteed bonds often are considered "moral obligations" of the state, and there is expectation that the state will act to prevent default.

The issuance of nonguaranteed debt is associated with another method for evading state constitutional restrictions. Many states establish special corporations with authority to issue their own—usually nonguaranteed—debt. A state-by-state listing of the number of agencies and corporations authorized to issue debt is provided in Table 2. The more stringent the constitutional restriction against borrowing, the greater the number of agencies or corporations authorized to borrow.

The proliferation of public corporations and "quasi" governmental units with authority to borrow has made it difficult to secure accurate and comprehensive data on the amount of state debt. The statistics in Table 1 are derived from U.S. Census reports but they differ in many instances from the listing furnished by Moody's. Where there is a discrepancy between these two sources, Moody's—which lists every outstanding bond issue—usually shows a higher level of total debt. As might be expected, the discrepancy usually occurs in the amount of nonguaranteed debt, for it is precisely this type of obligation which is issued by special corporations. Thus, in 1977, the Census reported $450 million in nonguaranteed debt for the State of Minnesota, whereas the individual issues listed in Moody's totaled $665 million.

Although most states are restricted in their borrowing practices, total state debt has been rising more steeply than that of the Federal Government which is not encumbered by constitutional restrictions.

Table 3 shows that the states now account for a larger share of total public debt in the United States than at any other time since World War II.

CONCLUSION

State experience offers meager support for the expectation that constitutional restrictions will constrain governmental borrowing. While one ought to be wary about generalizing from state ot federal budgeting, the budgetary practices of the Federal Government offer little encouragement for the long-term effectiveness of constitutional limitations. Even in the absence of such limitations, the Federal

---

[6] *Clarke v. South Carolina Public Service Authority*, 177 S.C. 497 (1935).

[8] The classification of state constitutional restrictions is derived from Hetus, op. cit., Chapter 3.

[7] Mitchell, William E., The Effectiveness of Debt Limits on State and Local Government Borrowing (New York University, Graduate School of Business Administration Bulletin, October 1967), p. 48.

Government has authorized tens of billions of borrowing by "quasi" or "non-governmental" agencies outside the statutory debt limitation currently in effect.

The way in which constitutional provisions can be affected by "creative budgeting" is amply demonstrated by reference to the constitutional prohibition that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." Despite this provision which has remained unchanged since 1787, hundreds of billions of dollars have been spent without prior appropriation. Agencies have been authorized by Congress to "borrow" from the Treasury—or the public—without first obtaining an appropriation. This technique seems to satisfy the letter of the constitutional requirement, even though the intent has not been fully honored. Other creative techniques are likely to issue from federal budgeters and legislators if they are confronted with restraints on borrowing similar to those which have been evaded by state governments.

TABLE 1.—LONG-TERM INDEBTEDNESS OF STATE GOVERNMENTS, JUNE 30, 1977

[Dollar amounts in millions]

State	Full faith	Non-guaranteed	Total	Percent non-guaranteed
Alabama	$111.9	$885.3	$997.1	88.8
Alaska	530.0	358.3	888.3	40.3
Arizona		101.1	101.1	100.0
Arkansas		140.4	140.4	100.0
California	5,704.0	1,001.9	6,710.0	14.9
Colorado		197.3	197.3	100.0
Connecticut	2,407.6	764.0	3,171.6	24.1
Delaware	408.7	332.9	741.7	44.8
Florida	433.7	1,569.7	2,003.4	78.3
Georgia	368.8	889.7	1,258.5	70.9
Hawaii	1,165.5	302.7	1,468.2	20.6
Idaho	1.1	49.8	50.9	97.8
Illinois	1,632.0	2,252.4	3,884.4	58.0
Indiana		577.6	577.6	100.0
Iowa		124.0	124.0	100.0
Kansas		482.8	482.8	100.0
Kentucky	331.3	1,708.9	2,040.6	83.8
Louisiana	1,298.2	466.0	1,764.2	26.4
Maine	274.9	289.2	564.1	51.3
Maryland	2,966.7	884.4	3,851.1	23.0
Massachusetts	3,203.4	1,945.2	4,148.6	60.8
Michigan	738.5	1,150.7	1,889.2	37.6
Minnesota	746.3	450.1	1,196.4	10.5
Mississippi	725.6	84.1	802.6	82.0
Missouri	79.1	361.4	440.4	81.1
Montana	7.4	94.0	101.4	100.0
Nebraska		98.3	98.3	83.3
Nevada	36.3	18.3	54.6	32.5
New Hampshire	223.9	118.3	365.2	57.9
New Jersey	1,680.9	2,274.8	3,955.7	84.8
New Mexico	25.0	186.9	211.9	90.1
New York	3,715.7	14,978.9	18,694.6	21.6
North Carolina	633.0	174.0	807.0	77.6
North Dakota	15.1	52.2	67.3	95.1
Ohio	1,897.1	1,079.2	3,070.3	79.6
Oklahoma	174.2	762.8	937.0	3
Oregon	2,412.2	19.1	2,431.2	38.2
Pennsylvania	3,948.7	2,376.7	6,294.9	57.1
Rhode Island	273.9	364.4	638.3	60.9
South Carolina	502.7	781.1	1,283.9	100.0
South Dakota		218.4	218.4	98.9
Tennessee	681.9	404.6	1,086.4	58.3
Texas	885.9	1,239.1	2,125.0	41.4
Utah	85.0	88.5	146.5	44.3
Vermont	225.9	201.4	454.3	94.6
Virginia	41.0	751.8	756.8	20.7
Washington	1,118.2	293.6	1,411.8	34.7
West Virginia	855.4	459.8	1,315.2	27.7
Wisconsin	1,218.7	454.0	1,674.7	100.0
Wyoming		73.3	73.3	

Source: Bureau of the Census.

TABLE 2.—STATE AGENCIES AUTHORIZED TO ISSUE NONGUARANTEED OBLIGATIONS

State	Agencies	State	Agencies
Alabama	27	Montana	2
Alaska	5	Nebraska	4
Arizona	5	Nevada	1
Arkansas	9	New Hampshire	3
California	3	New Jersey	14
Colorado	4	New Mexico	2
Connecticut	8	New York	20
Delaware	5	North Carolina	13
Florida	10	North Dakota	9
Georgia	11	Ohio	15
Hawaii	3	Oklahoma	7
Idaho	3	Oregon	9
Illinois	13	Pennsylvania	10
Indiana	8	Rhode Island	11
Iowa	3	South Carolina	1
Kansas	9	South Dakota	6
Kentucky	7	Tennessee	4
Louisiana	10	Texas	12
Maine	5	Utah	2
Maryland	4	Vermont	6
Massachusetts	15	Virginia	7
Michigan	6	Washington	5
Minnesota	6	West Virginia	6
Mississippi	2	Wisconsin	5
Missouri	5	Wyoming	1

Source: Moody's.

TABLE 1.—PERCENTAGE DISTRIBUTION, GROSS PUBLIC DEBT (SELECTED YEARS)

Year	Federal	State	Local
1940	67.9	5.7	26.4
1950	91.4	1.9	6.7
1955	85.1	3.5	10.4
1960	80.4	5.2	14.4
1965	76.1	6.5	17.4
1970	72.1	8.2	19.7
1975	70.7	9.6	19.8

Source: Tax Foundation.

AMERICAN JEWISH CONGRESS,
COMMISSION ON URBAN AFFAIRS,
New York, N.Y., February 27, 1980.

Senator EDWARD M. KENNEDY,
Chairman, Senate Judiciary Committee,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: It is our understanding that the Senate Judiciary Committee will next week consider Senate Joint Resolution 126 which would mandate a balanced budget every year except during a war or when three-fifths of the Congress voted to approve a deficit. It would also prohibit an increase in taxes as a percentage of national income (or another index) without a majority vote in each house.

AJCongress opposes this proposal because it would severely limit our nation's ability to correct some of our basic problems. While it is true that it includes a provision that would allow for increased spending during an emergency, it would make it virtually impossible to carry out a war for energy independence or against unemployment or poverty. Such an amendment would be so restrictive that it would be very difficult for Congress and the President to act quickly when a depression threatens or an economic downturn begins. Moreover, in light of the fact that a substantial part of the federal budget consists of mandated costs for a variety of programs, compulsory balancing could compel reductions in federal aid to states and cities which, in turn, would severely harm our urban areas and the poorest members of society.

We urge you, as Chairman of the Judiciary Committee, to use the full power of your office to prevent the adoption of this amendment. For your information, we are enclosing a copy of our recent statement in opposition to a balanced budget amendment which was presented to the Subcommittee on the Constitution.

Thank you and best wishes.

Sincerely,

SEYMOUR Z. MANN, Ph. D.
ROBERT LEKACHMAN, Ph. D.

Prepared Statement of the American Jewish Congress

Introduction

The last year and a half has produced dozens of proposals for Constitutional amendments which would restrain the Federal government's spending. While all of them would impose on Congress and the President a formula to govern its spending, there are substantial differences in how they would accomplish this goal. The major categories of proposals include the following:

1. Balance the budget—these would require Congress to annually balance the budget. Exceptions are made for war or other national emergencies when a deficit could be approved. Such action would require approval by an extraordinary majority.

2. Expenditure limitations—these would link increases in Federal spending to the growth in the nation's economy. Some of the formulas suggested for this include provisions for considering the annual inflation rate.

3. Debt reduction—these would mandate a reduction in the national debt by a specific percentage every year. Under one proposal, the decline would be 3 percent in 1980, 4 percent in 1981 and 5 percent annually thereafter.[1]

4. Tax limitations—these would decrease income taxes or index them to the annual growth in inflation. One of the best known of these proposals is Kemp-Roth, which would reduce individual income taxes by 10 percent annually for several years.

5. Review—these would require the President to submit to Congress a balanced budget proposal in any year in which he submits a budget which contains a deficit. This would enable the Congress to consider the impact of balancing the budget.

Balanced Budget Amendment

The American Jewish Congress is opposed to amending the United States Constitution to mandate a balanced budget. We take this position because of a variety of reasons relating to the nature of the Constitution, the uncertainty of what should be included in the Federal budget and specific objections to a balanced budget requirement.

The Constitution is the fundamental law of our nation and establishes the broad structure of our government and our basic rights. As it is meant to establish through fundamental law the organic nature of our system of government rather than specific policies, it should not be amended to incorporate a particular fiscal policy which would represent a permanent decision to limit the capacity of the Federal government to react to future conditions about which we are unaware.

To include in our Constitution a balanced budget amendment would mean the enshrinement of a specific economic policy. As Justice Holmes observed, the "Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of a citizen to the state or of laissez-faire."[2]

A balanced budget amendment would of necessity have to be lengthy and cumbersome in order to define the terms used and provide appropriate loopholes aimed at avoiding disasters. Some of the versions proposed are actually longer than the Bill of Rights or Article I of the Constitution which describes almost all the powers of Congress. Indeed, some proposals are so technical that if adopted it would not be long before a movement were initiated to amend them.

The proposed balanced budget amendment also raises the question of what should be included in the budget. Current practices are made up of written and unwritten rules which would not automatically be changed by the adoption of a balanced budget amendment. Indeed, one can expect the opposite to be true. The more restrictive the balanced budget amendment, the more likely that Congress and the President would attempt to adopt new practices to avoid having some expenditures included in the budget.

"Off-budget" outlays are the expenditures of Federal agencies which are entirely or partly excluded by Congress from the budget. Most off-budget outlays are spent by the Federal Financing Bank which is authorized to purchase in whole or in part any federally guaranteed obligations. When the Federal Financing Bank needs to finance its purchases, it borrows from the Treasury, which, in turn, borrows from the public. Other "off-budget" agencies include the United States Railway Association, the Postal Service Fund and the Pension Benefit Guarantee Corporation. While in the last few years efforts have been initiated to

---

[1] It must be pointed out that the implementation of this proposal would require not a balanced budget, but a budget surplus.

[2] *Lochner* v. *New York*, 198 U.S. 45, 75 (1904).

include some "off-budget" outlays in the Federal budget, there have thus far not been successful. If they were part of the budget, they would have required an additional $12 billion to be included as expenditures in fiscal 1980.

The relationship between the budget and private corporations established and chartered by the United States to perform specific public functions must also be considered. Included here would be such credit operations as the Student Loan Marketing Association and the Federal National Mortgage Association. While the securities issued by these corporations do not increase the liability of the United States government, it is commonly felt that they are similar to "moral obligation" bonds and the government would not be able to stand on the sidelines if such an enterprise failed. In fiscal 1980, they constituted outlays of up to $20 billion.

Guaranteed loans represent yet another category of Federal financial transactions that are excluded from the budget. These are loans for which the United States government is committed to pay part or the whole of the principle and/or interest where a borrower defaults.

Strict limitations on deficits or expenditures would only invite the expansion of these vehicles and the creation of additional ones for spending money that are not part of the budget. While the purpose of these would be to evade Constitutional limitations, it must also be borne in mind that such transactions are not subject to the normal political controls of regular government agencies.

The definition of outlays is yet another question that would have to be addressed if a balanced budget amendment was adopted. Since the computation of outlays can hide real budget totals, one issue that arises is how outlays are counted for budgetary purposes. For example, by counting government loans on a net basis (gross amount of loans minus repayments) as opposed to a gross basis, one would end up with a different perception of the budget.

The major point being made here is that a Constitutional limitation by itself would not resolve such definitional and accounting issues but would require numerous statutes and regulations to spell out the Constitutional intent. This being the case, we are doubtful that a Constitutional amendment should be the vehicle to accomplish what would ultimately have to be decided in large part by laws and administrative decisions.

We believe that many of the basic assumptions in favor of balancing the budget—the view that deficits cause inflation, excessive government spending and reduce the rate of economic growth by absorbing private savings that would otherwise flow into investments—represent poor arguments on which to call for a major Constitutional change. While the United States has had deficits almost continually since 1929, these have not always been accompanied by inflation. Whether deficits are inflationary or not depends on a variety of factors including their size, timing and the means by which they are financed. Some believe that the linkage between debts and inflation results from the fact that the former bring about monetary expansion which is inflationary. However, it seems unclear as to whether or not deficits have been a major cause of excessive monetary expansion in the past or that they will have this impact in the future.

Even if it were clear that deficits caused monetary expansion which led to inflation, the remedy for this should be found in the monetary system rather than in the budgetary system. Moreover, if a deficit is financed by borrowing from real savings, then it will not have an inflationary impact.

Since a budget is essentially a forecast of expectations based on program objectives and judgments about the behavior of the economy for the coming fiscal year, a balanced budget amendment would make it extremely difficult for the nation to respond quickly to changing economic circumstances. For the Federal budget, as large as it is, and enacted in the knowledge of known uncertainties, a so-called balanced budget could become a truly unrealistic document. It would result in inflexibility with respect to economic policymaking at the Federal level when flexibility may really be what is required. For example, a budget balanced at the beginning of the year may be sharply askew nine months later because a threat of mild recession led to government receipts falling beneath their projected level. Under these circumstances, Congress might wish to pump more money into the economy to prevent a depression. However, under some strict definitions of a balanced budget amendment, this could not be accomplished unless an emergency were declared. The latter could lead to a long-drawn out debate since most proposals provide for a two-thirds vote for such action. By the time any action were agreed to (if it were), it might be too late to accomplish any positive results.

Moreover, there is also a question regarding what sanctions would be employed under a balanced budget amendment if expenditures exceeded revenues. Would this mean that the Supreme Court takes precedence over the daily operations of the Federal government? While many would agree that this is unlikely, no alternative mechanism is clear.

There is also an assumption that since state and local governments are required to balance their budgets, it is therefore correct to mandate this for the Federal budget. The problem with this view is that states and localities are allowed to borrow funds for capital outlays while Federal budgetary accounting places operational and capital expenses in the same pot. Balancing the Federal budget means matching total outlays with current tax revenues which is quite different from the balanced budget concept for states and localities. If the Federal government had a capital budget, it has been estimated that as much as $35 billion in President Carter's 1980 budget could have been placed in it. This would more than eliminate the deficit.

There is also another major difference between state and local and Federal budget impacts. The states can balance their budgets by cutting spending or increasing taxes without jarring the entire American economy. The Federal budget cannot. If problems occur in our economy and the unemployment rate increases and profits decrease, the Federal budget will automatically run a deficit due to declining revenues and rising expenditures. Mandating a balance Federal budget, which in these circumstances would require increasing taxes or cutting spending, could increase sluggishness in an already declining economy.

On the subject of the size of the Federal debt, it must be noted that since the conclusion of World War II, the Federal government's debt has grown at a slower rate than the state and local governments. In 1979, the Federal debt is 2.3 times what it was in 1950, while the state-local debt is 13 times higher, consumer installment debt is 14 times higher, mortgage debt is 16 times higher and corporate debt is a dozen times higher. These figures serve to place the Federal debt in proper perspective.

It must furthermore be recognized that over ¾ of the Federal government's expenditures in 1980 are classified as relatively uncontrollable. This means that in the short run most of the burden for meeting a balanced budget requirement would have to be met by the so-called controllable sector of the budget. A likely target among the controllables is the defense budget which makes up over one-half of this category. Among the uncontrollables, Federal assistance to state and local governments, which in the last fiscal year totaled approximately $90 billion, may be cut. The revenue sharing program, one which the states find especially pleasing because of the minimum regulations involved, could be in danger. Its future would be in some doubt since the Federal forecast for its 1980 deficit is roughly equal to the 1978 states' surplus of $29 billion.

CONCLUSION

In conclusion, we would like to reiterate our opposition to a balanced budget amendment for the reasons offered above. Our major concern is that such a step would represent a serious erosion of the lawmaking powers of the United States Congress and very likely would make it impossible for that body to respond to our nation's changing needs.

Respectfully submitted,

SEYMOUR Z. MANN, Ph. D.
Chairman.

ROBERT LEKACHMAN, Ph. D.
Cochairman.

Technical Consultant: Martin Hochbaum, Ph. D., Director, Commission on Urban Affairs.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, D.C., February 21, 1980.

Hon. BIRCH BAYH,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The International Union, UAW has taken a strong position against all proposed Constitutional Amendments which would mandate a balanced federal budget. We note that you opposed amending the Constitution

on this issue in the Subcommittee, and want to express our appreciation to you for that.

Our objection to the various proposals that have been advanced in this area is based on two general concerns. First, we think that it would be a serious departure from the basic character of the Constitution to adopt an amendment regarding fiscal policy. We believe that an individual or an organization may be committed to the principle of a balanced budget, but that individual or organization with such a committment can also recognize the inappropriateness of writing this concept into the Constitution.

Our second general concern goes to the economics of such an approach. A Constitutional Amendment mandating a balanced budget would, even in the most optimum circumstances, inhibit the ability of the Legislative and Executive branches to respond to changing economic circumstances and national defense needs. We recognize that some proposals in this area provide opportunities for the Congress to adopt a budget that is in deficit, but we believe that such "escape clauses" will not work well in practice. As the UAW stressed in its testimony before your Subcommittee in opposition to the balanced budget amendments, we fear that any such proposal would increase significantly the possibility of a moderate downturn in the economy becoming a major recession or even a depression.

We know of no one in public life who does not believe that a balanced federal budget in times of high employment is a desirable goal. We certainly believe that to be the case, but the persistent high unemployment and rapidly changing defense requirements may mean a practical delay in the realization of the goal of a balanced budget. Under those circumstances we continue to believe that a Constitutional Amendment in this area is not only poor Constitutional law, but also dangerous economics. We hope sincerely that the full Judiciary Committee will reject all amendments of this type.

Sincerely,

HOWARD G. PASTER,
Legislative Atrector.

NATIONAL URBAN LEAGUE, INC.,
Washington, D.C., February 19, 1980.

Hon. BIRCH BAYH,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR BAYH: You will soon have before you S.J. Res. 126, the constitutional amendment to balance the Federal Budget. As you know, S.J. Res. 126, was passed by a small margin in the Constitution Subcommittee during the closing days of the first session of the 96th Congress. The implication of this passage is of critical concern to the National Urban League, as we stand in direct opposition of all constitutional proposals to balance the budget.

Spiraling inflation takes its toll on all Americans and our commitment toward controlling it is undisputed. However, a constitutional mandate to balance the budget has, historically, proved an ineffective approach to the problem. In fact, significant progress has been made under existing congressional budget procedures in reducing the deficit levels which contribute heavily to high inflation rates.

Since the adoption of the Congressional Budget Act of 1974, the federal deficit has been reduced from over $65 billion to a projected $16 billion in fiscal year 1981. The Congress is effectively employing existing procedures and the intended results are becoming evident. It would be wrong, in our view, to discard the process when it is beginning to take hold. Although the calls for a balanced budget amendment may hold a symbolic appeal, the tough battle against inflation will only be won by fiscal discipline coupled with the flexibility to respond to rapidly changing conditions.

We are also extremely concerned about the disproportionate power a small minority of Congress would hold under the pending resolution. Reserving the power to block a waiver of the balanced budget requirement to a two-fifths, or even a one-third minority, undermines democratic principles. Such requirement would have a detrimental impact on matters of vital interest to those constituencies which are without powerful and well financed support and representation.

It is the League's contention that the adoption of such an amendment would only worsen a sagging economic condition. With Black unemployment (12.6 percent) currently more than twice the overall unemployment rate of 6.2 percent,

a balanced budget would not only have a disasterous impact on the poor, elderly and minority communities, but also place a disproportionate share of the burden on the already over-burdened middle class.

Accordingly, we strongly urge you to oppose any proposals calling for the adoption of a constitutional amendment to constrain the budgetary process.

Sincerely,

MAUDINE R. COOPER,
Acting Vice President,
for Washington Operations.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
WASHINGTON BUREAU,
Washington, D.C., February 20, 1980.

Hon. BIRCH BAYH,
Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: The National Association for the Advancement of Colored People strongly opposes any constitutional amendment to balance the Federal budget and urges you and members of the Committee to vote against S.J. Res. 126 or any substitutes which may be offered at markup.

It is our belief that the Constitution was never intended as a vehicle for fiscal policy and the appropriate response to the problem of inflation does not rest in the generalities of a constitutional amendment.

The NAACP is particularly concerned about the chilling effect such an amendment would have on domestic programs involving civil rights and urban programs, as well as the additional burdens it would place on the poor and minorities, perennial victims of changes in the nation's economy, with cuts in social programs.

Black unemployed is over eleven (11) percent nationally, nearly twice as high as that for whites and black youth unemployment soars over thrity-two (32) percent. These stark reminders point up the need for budgeting flexibility.

We are not unmindful of the dangerous precedent such an amendment would create for no other amendment to the Constitution allows for its suspension or waiver. The NAACP, representing 1800 branches in the fifty states and the District of Columbia, believes that the need to constantly waive the terms of any proposed amendment clearly demonstrates that it is not an immutable principle of government and, therefore, should not be written into the Constitution. Additionally, reserving to a minority of the members of Congress the power to preclude any deficit spending could very well prejudice certain constituencies.

We are consciously aware that a constitutional requirement to balance the Federal budget may have a symbolic effect for some during an election year; however, it is NAACP's belief that the amendments are regressive, dangerous and will have a disparate impact on blacks, minorities and the poor by exacerbating a sagging economy.

The NAACP urges your commitment to oppose S.J. Res. 126 or any substitute offered in its stead in Judiciary Committee deliberations on this issue.

Sincerely yours,

BENJAMIN L. HOOKS,
Executive Director.
By ALTHEA T. L. SIMMONS,
Director, Washington Bureau.

NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., February 22, 1980.

Hon. BIRCH BAYH,
Chairman, Subcommittee on Constitution, Senate Committee on Judiciary,
Russell Senate Office Building,
Washington, D.C.

DEAR CHAIRMAN BAYH: The National Education Association appreciates this opportunity to comment for the record on our firm opposition to amending the United States Constitution to require Congress to balance the federal budget

There are approximately 65 separate versions of proposed Constitutional Amendments or other measures designed to restrict or require a balanced federal budget pending before the 96th Congress. Although these measures vary significantly, they can be classified into two general categories. One category would require federal revenues to equal or exceed expenditures in each fiscal year. The other category would limit federal spending to a fixed percentage of national income or the gross national product. Generally, these proposals would contain a mechanism whereby Congress, by a two-thirds, three-fourths, or three-fifths vote and/or with the concurrence of the President, may override the limitation in times of war or "national emergency." In addition to a balanced budget some proposals would require that the national debt be retired over a specified period of time. While proposals currently before Congress range from those adorned in simplistic clarity to those garbed in elaborate complexity, all are delimiting in nature.

The proponents of a Constitutional Amendment offer several arguments in support of their proposals.

Deficit spending is detrimental to the economy—excessive federal spending is the real cause of inflation.

The need for a flexible economic policy is overstated; government increasing expenditures and deficits in times of recession and decreasing them in periods of growth does not work.

Increased federal spending means encroachment of the public upon the private sector; the size and power of federal government should be curtailed.

Congress won't act without a constitutional mandate; Members react to political pressure.

The National Education Association fully supports the legislative process and believes it should be preserved as the method for establishing the budget and appropriating funds. We also believe that Members of Congress, who are a part of the legislative process, must be accountable to their constituencies. We should not be concerned that "accountability" may be equated to political pressure. What is political pressure but the right of the American people to petition the government for a redress of grievances guaranteed by the Bill of Rights?

Our reasons for opposing an amendment requiring Congress to balance the federal budget are several.

Times of economic uncertainty and international unrest call for a flexible fiscal policy which Congress has the authority to establish. The existing Constitutional process to establish the budget is adequate.

The incidence of reduced spending caused by underestimating need in a balanced budget would fall on the controllable items as opposed to the uncontrollable. Interest on debts, social security payments, and unemployment compensation must be met while education expenditures could be reduced during the year to balance a budget.

A Constitutional Amendment will shift the ultimate decision in budget making from Congressional and Administrative branches to the Judicial, since that is the final arbiter of the Constitution. The possibility that lawsuits could be filed challenging each federal expenditure on Constitutional grounds presents a chilling picture.

Even a legislated action limited the budget to a projected percent of the Gross National Product could be disastrous. An error of one percent of the GNP less than projected could reduce the budget by $23.6 million (based on 1979 GNP); this is one and one-half times the Education Budget total.

NEA supports the pursuit of a balanced budget, but insists that the ultimate solution to present economic difficulty is to increase productivity. Education and training are essential to the growth of our economy. A productive, growing economy can deal constructively and effectively with inflation. A Constitutional Amendment to balance the budget is, in our judgment, a simplistic, knee-jerk reaction to a deep-seated problem. We believe that the defects of this approach will become apparent on close examination.

The need for increasing productivity, reducing employment, and curbing inflation will remain. Only these measures can effectively restore the health of our national economy.

Sincerely,

JAMES W. GREEN,
Assistant Director for Legislation.

NATIONAL FARMERS UNION,
February 25, 1980.

Dear Senate Judiciary Committee Member:

The National Farmers Union opposes the adoption of S.J. Res. 126, a proposed constitutional amendment for a balanced federal budget. Such a policy would be a dangerous attack on our Constitution and would severely limit the ability of the President and Congress to function. It proposes to use untried and inflexible methods to accomplish a short-term economic policy.

The crucial issue about a federal budget is not the budget total or the budget surplus or deficit. The vital issue is how the money is used and what kind of priorities we have. We need to be concerned that money paid out is for good purposes and money taken in through taxation is levied on the ability to pay. We must be concerned that prices reflect a fair compensation for labor, management, and investment, but do not result in unjustified enrichment.

We need to address ourselves to the basic issues of employment, a stable and abundant food supply, a national health insurance program, a sound energy program, an equitable trade policy, and protection of our precious heritage or soil, air and water that makes our nation habitable. A balnaced budget amendment will not control escalating interest rates or profits. It will not stop rising energy or health care costs. It will not help farmers produce food and fiber for a hungry world. It will not provide jobs for those who want to work or support for those who are unable to provide for themselves. The National Farmers Union is confident that a balanced budget amendment would create an unfavorable domestic and international atmosphere.

Sincerely,

TONY T. DECHANT, *President.*

NATIONAL COUNCIL OF SENIOR CITIZENS, INC.,
Washington, D.C., February 25, 1980.

Hon. BIRCH BAYH,
Chairman, Subcommittee on Constitution,
Russell Senate Office Building,
Washington, D.C.

DEAR CHAIRMAN BAYH: We are becoming increasingly concerned about congressional efforts to place arbitrary spending limitations on federal programs or to mandate a balanced federal budget. These attempts ignore the basic fact that federal deficits are neither inherently bad nor inherently good. If this country is plunged into a serious recession, it may be necessary to borrow funds in order to deal with increased unemployment, inflation or a drop in productivity. During the recession of 1974–1975, a mandated balanced budget would have pushed unemployment to almost 12 percent and slowed the economic recovery.

The NCSC and its members see the call for a constitutional amendment as a blatant attempt on the part of its supporters to gain political mileage out of a perceived trend in this country to reduce government spending. Interestingly enough is the fact that when Americans are asked whether they support reduced spending, they say, yes. Yet when specific service cutbacks resulting from lower government spending are mentioned, these same people say, no. We believe that Americans are tired of excessive waste and fraud in government programs, but at the same time they understand the underlying goals of these programs and support them.

While we are fearful of what a balanced budget would mean to the aged and the poor, we have a far greater fear of the paralysis such an amendment could inflict on the government. During the Roosevelt Administration, deficit spending was used to pull this nation out of a devastating depression. Similarly, America's entrance into World War II required substantial borrowing from the U.S. Treasury. Any constitutional amendment seeking to require a balanced federal budget would have to be so filled with loopholes as to render it useless.

We urge all members of the Senate Judiciary Committee to vote against S.J. Res. 126. It is a misguided effort to hog-tie every federal program and could bring the wheels of our economy to a screeching halt.

Sincerely,

WILLIAM R. HUTTON, *Executive Director.*

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK,
COMMITTEE ON FEDERAL LEGISLATION,
New York, February 25, 1980.

Hon. BIRCH BAYH,
Chairman, Subcommittee on the Constitution,
U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: On behalf of the Committee on Federal Legislation of the Association of the Bar of the City of New York, I have the honor to respond to your request for our comments on S.J. Res. 126, the proposed constitutional amendment requiring a balanced budget and limiting Federal spending.

We oppose S.J. Res. 126 for the same reasons we opposed earlier resolutions proposing similar amendments, as expressed in our May 1970 Committee Report (a copy of which is attached to this letter). Leaving aside the basic economic policy question of whether there should be a permanently balanced budget, on which we, as lawyers and not economists, take no position, we oppose budget-balancing by constitutional amendment for the following reasons:

(1) The proposed amendment would effect a fundamental—and in our own view unwarranted—change in the character of the Constitution. It is unlike any existing amendment, both in form and substance. Except for the 18th and 21st amendments, adopting and then repealing prohibition, the amendment process has been sparingly used either to correct what Madison called "discovered faults" in the original governmental structure or to protect fundamental rights against governmental infringement. The purely social or economic policies which were the basis of the prohibition amendment and underlie S.J. Res. 126 reflect less basic, more transitory concerns which, however popular they may now be, do not warrant elevation to permanent constitutional status. As Justice Holmes cautioned seventy-five years ago, the "Constitution is not intended to embody a particular economic theory. . . ." These matters are best left to the legislative and political process erected by the Constitution itself.

(2) Congress and the President already have the full constitutional authority to balance the budget without the need for a constitutional amendment. The raising of such a policy to constitutional status, however, will create difficult problems of governance.

(3) S.J. Res. 126, if ratified, will likely involve the judiciary in the day-to-day workings of the budgetary process. The amendment will undoubtedly result in a host of lawsuits—annually recurring—challenging particular expenditures and appropriations and every attempt to raise or lower taxes. Our courts are ill-equipped to handle these matters, now generally excluded from their jurisdiction. More importantly, judicial involvement in the budgetary process, which is inevitable if the amendment passes, will radically alter, for the worse in our view, the present system of checks and balances among the three branches of government and add a new element of uncertainty to the entire process. No budget, no expenditure, no appropriation, no tax will be legal until approved by the Supreme Court—no doubt several years later.

(4) The "three-fifths" override provision of Section 1 of S.J. Res. 126 also poses difficult constitutional problems. It will be unique to the Constitution, which at present requires "super majority" votes in Congress only in rare situations affecting the basic separation of powers—such as overriding a presidential veto or convicting upon impeachment. The proposed amendment, however, would effectively undo the principle of majority rule which is basic to our constitutional scheme. Under S.J. Res. 126, if the government were already spending to the constitutional limit, military or other emergencies of any sort—indeed, any new government activity needing major additional expenditures—would require a three-fifths vote of the Congress. The potential for government chaos or for a tyranny of the minority defeating any controversial or new project would be immense. Just imagine how much more difficult it would be for our country to respond immediately to international crises if a small group in Congress can block emergency expenditures until their various minority demands—perhaps unrelated to the crises themselves—are fulfilled in exchange for the votes necessary to achieve the three-fifths super majority.

Moreover, the last sentence of Section 1 appears to prohibit any change in the budget once adopted. It seemingly prevents the government from responding at all to emergencies that arise once a fiscal year has begun.

(5) S.J. Res. 126 also presents serious drafting problems. Section 4 seeks to etch into constitutional stone forever the current budgetary terminology. Besides the endless litigation likely to be necessary in the future to determine what technical terms meant in 1980, the amendment will stifle all development, improvement and change in the budgetary process. Today's economic jargon may become future stumbling blocks to progress. Moreover, the current budgetary process is so flexible that, as one expert estimated, Congress could adopt a $100 billion national health insurance program without adding a single dollar to the budget. Future congresses may be forced to resort to similar budgetary chicanery simply in order to keep the government functioning should the amendment prove economically unwise.

Moreover, Section 2 of the proposed amendment appears meaningless. It requires Congress to do explicitly what Congress now does implicitly. The formal roll call vote mandated by Section 2 of the S.J. Res. 126 will undoubtedly become no more than a ritualistic charade.

In sum, S.J. Res. 126, like its predecessors, remains too blunt a weapon, to paraphrase the Wall Street Journal, a wholly inappropriate means of solving the complex, uncertain and everchanging economic problems which confront our nation. Today's panacea, if elevated to constitutional status, is likely itself to become tomorrow's problem. For these reasons, we oppose the passage of S.J. Res. 126.

If you would like any further information on the matter, please feel free to contact us.

Respectfully,

STEVEN B. ROSENFELD, *Chairman.*

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 West 44th Street, New York, N.Y. 10036

Budget-Balancing By Constitutional Amendment

By THE COMMITTEE ON FEDERAL LEGISLATION

Congress and state legislatures throughout the country are debating whether the United States Constitution should be amended to require the federal government to balance its budget. As this Report is written (May 1979), as many as 30 states have passed resolutions calling for a constitutional convention to propose a balanced-budget amendment.[1] Several committees of both houses of Congress have scheduled hearings on which, if any, of scores of proposed amendments should be adopted.

The issue has important political as well as economic consequences. Both parties are internally divided over whether constitutionally-mandated fiscal restraint is appropriate or desirable; the issue threatens to loom large in the 1980 presidential primaries and election.[2] Lurking scarcely concealed beneath the budget question is the larger and more complex question of which economic theories and policies will best control inflation and unemployment, and the more fundamental debate over the proper size and function of the federal government and what role it should play in the economy.

This Committee has carefully considered these and other questions and has studied the various proposals for constitutional amendments. We take no position on the economic policy issue of whether the federal budget should be balanced or federal spending limited. We do, however, strongly believe that, assuming a balanced budget is desirable, a constitutional amendment requiring that result is not. To elevate such a policy to permanent constitutional status is unwise and historically unsound and would fundamentally alter the principle of majority rule and the existing allocation of powers among the three branches of government. In our judgment, the economic policy issues raised in the current debate are best left to the political process where they can be resolved over time, unhampered by fixed or arbitrary constitutional strictures.

Editor's Note: This report, preprinted from THE RECORD of the Association for May/June 1979, is being distributed to members of Congress and interested executive departments and agencies.

I. THE PROPOSED AMENDMENTS

Balance-the-budget amendments are not new. As early as 1939, states began petitioning Congress to call a constitutional convention to propose an amendment limiting the federal taxing power.[3] The movement ebbed and flowed over two and one-half decades until, in 1963, proponents claimed that the requisite number of 34 states had passed calls for a constitutional convention. Since some of the resolutions were fifteen to twenty years old, twelve states had rescinded their applications and there were significant variations in the substance of the resolutions, the convention was never called.[4]

In 1957, the first state petition for a balance-the-budget constitutional convention was passed in Indiana. Several other states passed calls for budget limitation amendments in the 1960's.[5] The current movement began earlier in this decade and has received great impetus from the well-publicized success last year of California's Proposition 13 "tax revolt" initiative.[6]

Literally dozens of proposed constitutional amendments requiring a balanced or restricted budget are currently pending in Congress. As of mid-February 1979, *Time* counted 65 separate versions.[7] Although there are significant variations among the proposals, they fall into two major categories. Most would require that federal expenditures equal or exceed revenues in each fiscal year. Others would limit federal spending to a fixed percentage of national income or gross national product. The proposals generally provide a mechanism whereby Congress, usually by a two-thirds or three-fourths vote, and sometimes with the concurrence of the President, may override the budgetary limitations in times of war or "national emergency." Several proposals additionally require that the national debt be retired over a specified period of time. The sixteen proposed amendments which are currently the subject of hearings before the Subcommittee on the Constitution of the Senate Judiciary Committee are representative of the breadth and scope of the various proposals.

The simplest and shortest proposals—one paragraph—are S. J. Res. 10 (introduced by Senator McClure) and S. J. Res. 13 (Senator Helms).[8] *S. J. Res 10* would provide that "Congress shall assure" that the "total outlays" of the federal government in any fiscal year "do not exceed the total receipts." Although Congress could suspend this requirement "for a period not to exceed one year" by a two-thirds vote of both houses, no standard is given to govern exercise of that power. *S. J. Res. 13* is identical, except that the congressional override provision would be limited to "a grave national emergency" which must be declared by a three-fourths vote of both houses of Congress.[9] *S. J. Res. 4* (Senator Lugar) would require a two-thirds vote of both houses of Congress to pass any annual budget resolution in which the "appropriate level of total budget outlays" exceeds the "recommended level of Federal revenues."

Other pending resolutions are more elaborate. *S. J. Res. 38* (Senators H. Byrd and Helms) and *S. J. Res. 45* (Senator H. Byrd), drafted in four paragraphs, are similar to S. J. Res. 10 and 13 except that their override provisions would require a "national emergency," to be determined by a roll-call vote

of two-thirds of all the members of each house of Congress. Likewise, *S. J. Res. 11* (Senators Talmadge and Nunn) would mandate a balanced budget in each fiscal year, except during a state of war or a "national economic emergency" declared by only a simple majority of both houses of Congress, which are admonished to "take into consideration the extent and rate of industrial activity, unemployment, and inflation, and such other factors as they deem appropriate." *S. J. Res. 36* (Senator Heflin) would provide that "Congress shall make no appropriation for any fiscal year if the resulting total of appropriations . . . would exceed the total estimated receipts" for that fiscal year. In case of "a national emergency," including a formally declared war, Congress, with the concurrence of the President, would be able to override this provision by a roll-call vote of 55% of all the members of each house.[19] Congressional action would have to be completed within sixty days of a "special message" by the President or the introduction of a resolution sponsored by twenty-five percent of the members of either house. This amendment, unlike the others, would go into effect in the second fiscal year beginning after ratification.

S. J. Res. 2 (introduced by Senators DeConcini and Goldwater) and *S. J. Res. 6* (Senator Stennis) are virtually identical and contain an elaborate enforcement mechanism to ensure a balanced budget. Section 1 of both proposals would provide that "In exercising its power under article I . . . and, in particular, its powers to lay and collect taxes . . . and to enact laws making appropriations, the Congress shall seek to assure that the [government's] total outlays . . . do not exceed the total receipts" during a given fiscal year. In case the budget does not balance, sections 2 and 3 would require the President, within twenty days after the close of each fiscal year, to "ascertain" the "total receipts" and "total outlays" and "determine the percentage rate of income tax surcharge" necessary to make up any deficit. The surcharge would automatically go into effect, without further congressional action, for the calendar year following the close of the pertinent fiscal year. Congress, however, could suspend the income tax surcharge for all or part of the year in "a grave national emergency," including a formally-declared state of war. S. J. Res. 2 would require a vote of two-thirds of all the members of such house for such a suspension, while S. J. Res. 6 would require three-fourths.

Several proposed amendments would require, in addition to a balanced budget, that the national debt be retired. *S. J. Res. 7* (introduced by Senator Armstrong) would mandate, in addition to a balanced budget, that the national debt not be increased and that it be repaid within one hundred years following ratification, at the rate of 1/10 of the debt during each 10-year period. Likewise, *S. J. Res. 16* (sponsored by Senators Wallop, Morgan and Thurmond) would require both a balanced budget in each fiscal year "and that the federal indebtedness is eliminated." This amendment, however, would take effect gradually: For the first fiscal year after ratification, receipts could not be less than 95% of outlays. In the second year, receipts must total at least 98% of outlays. The budget would have to be balanced in the third fiscal year and, starting in the fourth year and for the next nineteen years, receipts would have to exceed outlays by five percent, the excess to be used

to retire the federal debt. Congress would have only limited power to override these requirements in case of a "national emergency," declared by two-thirds vote of all the members of each house: during such an emergency, expenditures could never exceed receipts by more than 10 percent and any indebtedness thereby created would have to be "extinguished" within three fiscal years.

S. J. Res. 46 (Senator H. Byrd) would require, in addition to an annual balanced budget, the retirement of the federal debt at the rate of 4% a year, beginning with the fifth fiscal year following ratification. Congress could, by two-thirds vote, incur new debt in a "national emergency," but such debt would have to be paid off within five years.

S. J. Res. 18 (sponsored by Senators Thurmond, Goldwater and Wallop) would involve the President in the constitutionally mandated budgeting process. Section 1 would require the President to transmit to Congress a proposed balanced budget by the fifteenth day after the start of each regular session. The budget would contain the President's estimate of receipts "under the laws then existing" and outlays (excluding trust funds) and proposals for additional taxes as necessary. Congress could not "authorize outlays to be made . . . in excess of the estimated receipts. . . ." Section 2 would provide that, beginning with the fifth fiscal year after ratification and continuing for the next twenty years, 5% of the government's receipts "shall be available only to reduce the public debt." Congress, by three-fourths vote of all the members of each house, could suspend the provisions of Sections 1 and 2 "for periods, either successive or otherwise, not exceeding one year each" in case of "war or other grave national emergency."

As previously noted, several of the proposed amendments would set a fixed limit on federal spending, not necessarily combined with a requirement that the budget be balanced. The simplest such proposal is *S. J. Res. 9* (introduced by Senator McClure). It would require that total outlays during any fiscal year (except for repayment of debt) not exceed 33⅓% of the "average national income for the three prior calendar years." During a "national emergency or war" the limit could be exceeded, but "all expenditures" in excess of the limit would have to be approved by a roll call vote of three-fourths of all the members of each house, taken in the fiscal year during which the limit is exceeded. *S. J. Res. 5* (proposed by Senator Dole) combines a balanced budget with a ceiling on federal spending. Under this proposal, Congress, by two-thirds vote of all the members of each house, could vote for a deficit budget in any year, but only if the budget was balanced in at least five of the preceding eight fiscal years. Any deficit generated in one fiscal year would have to be paid off in the next four years. This amendment further provides that, starting with the third fiscal year after ratification, both revenues and expenditures set forth in any budget resolution for a fiscal year could not exceed 18% of the "Gross National Product at the close of such fiscal year, as projected by the Director of the Congressional Budget Office." Congress could override this limitation by roll-call vote of two-thirds of the members of each house "present and voting."

Finally, there is *S. J. Res. 56* (introduced by Senators Heinz and Stone),

an elaborate proposal for limiting federal spending developed by economist Milton Friedman and others.[11] Section 1 would provide that "[t]otal outlays . . . during any federal year shall not increase by a percentage greater than the percentage increase in the nominal gross national product" during the last calendar year. If the inflation rate exceeds three percent, the "permissible percentage increase" in expenditures would be reduced by "one-fourth of the percentage by which the inflation rate exceeds three percent." "Inflation rate" would be defined as the difference between percentage increases in the "nominal gross national product" over the "real gross national product" for a given year. "Total outlays" would include "both budget and off-budget outlays," but exclude redemption of the debt or emergency expenditures.

Section 2 would require that any surplus of revenues over outlays be used to retire the national debt. Under section 3, emergency outlays in excess of the limit for the current fiscal year would be authorized by a "declaration of an emergency by the President" and a two-thirds vote of both houses of Congress. Section 4 would allow the spending limit imposed by section 1 to be changed "by a specified amount" by a three-fourths vote of both houses of Congress.[12]

Sections 5 and 6 would seek to prevent the spending limitation from adversely affecting state and local governments. Section 5 would require that, for the first six years following ratification, "total grants to states and local governments shall not be a smaller fraction of total outlays than in the last three fiscal years" prior to ratification. Thereafter, any reduction in the proportion of such grants to total federal spending would decrease the limit on total spending by an equivalent amount. Lastly, under section 6, the federal government could not require "directly or indirectly, that state or local governments engage in additional or expanded activities without compensation equal to the necessary additional costs."

II. *THE ARGUMENTS FOR A CONSTITUTIONAL AMENDMENT*

The proponents of a constitutional amendment limiting federal spending or requiring a balanced budget have put forth several arguments in support of their proposals:[13]

1. *Deficit spending is detrimental to the economy.* The heart of the proponents' economic argument is that excessive federal spending is the major cause of inflation, which, in turn, leads to unemployment, sluggish economic growth and decline of the dollar abroad. The ever-increasing national debt which is needed to finance governmental spending, it is argued, compounds the problem by "crowding out" private capital from the money market, thus siphoning off funds that would otherwise be available to business for capital improvement, a necessary component of economic growth.

2. *The need for a flexible economic policy is overstated.* Proponents reject Keynesian economic theory. They argue that the policy of "counter-cyclical" federal intervention in the economy (increasing expenditures and deficits in times of recession and decreasing them during periods of growth) simply does

not work effectively any longer. Monetary policy and other devices, it is claimed, provide sufficient tools for "fine-tuning" of the economy at most times.[14] They point out that the amendments have "escape clauses" which would permit the additional spending or allow a deficit if necessary to deal with true emergencies.

3. *The growth of government should be checked.* The proponents argue that ever-increasing federal spending means the "steady, irresistible encroachment of the public upon the private sector."[15] In words that echo the Jeffersonian dictum, "government which governs best governs least," the proponents assert that an amendment is necessary to "control government, control its power, control its interference, and control it by controlling its purse strings."[16] Advocates of the spending limitation proposals particularly argue that such an amendment will curb the future size and power of the federal government.[17]

4. *Congress, if let alone, will not act.* The political pressures on Congress, say the supporters of these amendments, are too great and the incentives too few for Congress itself to exercise fiscal restraint. Congressmen, in their natural desire to be re-elected, will resort to deficit spending to provide immediate benefits to their constituents, organized and vocal "special interest groups," and entrenched federal bureaucracies. Rather than face up to the need for restraint, they argue, Congress will keep "disguising the costs [of spending] in the form of borrowing and inflation which are diffused over large numbers of the rest of society. Under such conditions, the incentives of the politicians clearly point toward ever-increasing spending with continued inflationary deficits."[18] In the past twenty years the federal budget has been balanced only twice (in fiscal years 1960 and 1969), yet despite the current high rate of inflation, Congress has been unable to curb spending.[19] Only the constraints imposed by a constitutional prohibition will halt this process.

III. *THE ARGUMENTS AGAINST A CONSTITUTIONAL AMENDMENT*

The opponents of a constitutional limitation on the federal budget have argued that an amendment, however drafted, is not desirable for the following reasons:

1. *A constitutional amendment will not eliminate inflation but may exacerbate economic ills.*[20] Opponents challenge the assertion that deficits are the major cause of inflation and argue that a mandatory balanced budget policy is much inferior to a flexible fiscal policy in controlling the economy. They point, for example, to a 1976 congressional staff study which concluded that if the federal budget had been balanced between 1965 and 1974—a period of economic growth followed by a recession and then by renewed growth accompanied by high inflation—the result would have been "substantial losses in output, and increases in unemployment, with very little, if any, improvement in inflation."[21] Opponents stress that in times of recession, the government must be free to spend money to stimulate the economy to prevent recessions from worsening into depressions.

67-315 O - 80 - 9

2. *A constitutional amendment is unenforceable.* The definition of the federal budget, opponents point out, is by no means clear. Many governmental expenditures for programs such as the Federal Financing Bank (which is expected to spend $11 billion in fiscal 1980), for government-sponsored corporations, such as the Federal National Mortgage Association or the Student Loan Marketing Association, or for federal loan guarantee programs, are now generally considered "off-budget" and, by law and tradition, not included in congressional and popular discussions of expenditures and deficits.[53] Similarly, tax subsidies and incentives, considered by many to be a form of "negative" governmental expenditure, are not included in budgetary decision-making.[54] The definitional problems, opponents argue, demonstrate that an imaginative and creative Congress could shift or hide expenditures in "off-budget" items so as to create the illusion of a balanced budget without the reality. As one study recently observed, it would be possible, for example, to create a $100 billion national health insurance system without adding a single dollar to the budget.[55] On the other hand, to include these items in the budget only magnifies the problem of how to balance it.

3. *A mandatory balanced budget could cause great economic and social dislocations.* To achieve the amendment's purposes, opponents argue, federal spending would have to be cut dramatically or taxes increased sharply. To raise taxes significantly may not be politically or economically feasible. The expenditures most vulnerable to a cost-conscious Congress are likely to be those for many social service programs, including assistance to state and local governments. To reduce such spending, opponents argue, will only shift the economic and social burden now shouldered by the federal government to other levels of government.[56] Moreover, the end result may not be a significant reduction in the total public debt. Recently, say opponents of a constitutional amendment, the states have had combined surpluses that closely match the federal deficit.[57] To cut federal spending by reducing aid to states thus would not reduce the total amount of public debt, but only transfer it from Washington to the state capitals.

4. *Constitutional budget constraints will impede the government's ability to respond to economic and other crises.* Opponents of a constitutional amendment dispute the proponents' argument that a flexible fiscal policy is unnecessary and that existing monetary policy instruments are sufficient to "fine-tune" the economy.[57] Opponents also assert that the "national emergency" exemption contained in most proposed amendments may be illusory. Only a simple majority of Congress is necessary to declare war, but under the proposed amendments, two-thirds or three-fourths of Congress would have to approve paying for it. The difficulty of mustering such a large majority, even in times of crisis, could pose a significant barrier to effective government action when it is most needed. A high constitutional threshold, it is argued, would magnify the bargaining position of a small minority of Congressmen who could demand a high (and indeed, unrelated) price for their votes. On the other hand, government intervention in the economy, or any new governmental program which required additional spending, would be impossible, say the opponents, until a problem reached crisis proportions.[58]

5. *A constitutional amendment will shift ultimate budget-making authority from the legislative and executive branches to the judiciary.* Since the courts are the final arbiters of the Constitution, the judiciary, which now plays little or no role in raising taxes and allocating revenues—and is not equipped to do either—will invariably be thrust deeply into the budgetary process if required to enforce an amendment in the face of congressional failure to comply, use of accounting sleights-of-hand, or a sudden downturn in the economy causing revenues to fall.

Further, opponents argue, such an amendment raises the possibility of hundreds of lawsuits throughout the country being filed every year challenging each federal expenditure or appropriation on constitutional grounds. Even if such lawsuits and the prospects of disastrous confrontations between the Supreme Court and Congress or the President can be avoided,[89] the very exercise of judicial authority in the budgetary process will gravely undermine the congressional law-making function and could cause the erosion of respect for the judicial process.

6. *This is not a proper subject for a constitutional amendment.* The Constitution, opponents argue, establishes the basic structure of our government and gurantees fundamental rights to the people. It has not been and should not be amended to endorse a particular economic theory or program. A budget-balancing amendment, opponents argue, would be like the condonation of slavery in the original constitution or the short-lived prohibition amendment. It does not express the type of "broad and enduring ideals" to which the country can be forever committed. Its inclusion in the Constitution would only demean that document.[90]

7. *The same result can be achieved through legislation.* Opponents argue that since the budget is entirely within the control of Congress and the President, those two branches now have all the authority they need to enact legislation requiring a balanced budget or limiting federal spending. Such legislation can be more precisely drawn than a constitutional amendment to take into account the nuances and distinctions inherent in the budgetary process.[91] Opponents reject the argument that members of Congress are fiscally irresponsible. They note that Congress recently overhauled its budget-making procedures and each year is required to set a ceiling on appropriations.[92] As a result, opponents say, Congress is taking its budget responsibilities seriously and shows a willingness to curtail spending.[93] Finally, opponents argue, if the present Congress and President cannot balance the budget, the most appropriate remedy is to elect others who can.

IV. THE COMMITTEE'S RECOMMENDATION

The Committee does not express any opinion on whether the federal budget should be balanced or federal spending limited. Nor can we express any opinion on the likely economic effects of pursuing such a fiscal policy. We note with concern, however, that the economic impact of the proposed constitutional amendments is by no means certain. The potential economic effects are hotly disputed by economists and politicians; there is no clear con-

sensus, no common interpretation, no uniform view. This is an area where reasonable people can and do disagree. But as Justice Holmes cautioned nearly seventy-five years ago, dissenting in *Lochner* v. *New York*, the "Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*."[86] Economic policies are best left to the legislative and political process created by the Constitution itself, where the majority is enabled and expected to enact its consensus into law and to alter the law when the majority view changes.

More significantly, adoption of any of the proposed amendments would effect a fundamental—and in our view unwarranted—change in the character of the Constitution. The proposed amendments are unlike any other existing amendments both in form and in substance. Of the twenty-six amendments ratified since 1789, twelve protect the rights of individuals: amendments 1–10 (the Bill of Rights), 13 (prohibiting slavery) and 14 (prohibiting state infringement of due process and equal protection). Five amendments extend the right to vote: 15 (race), 19 (sex), 23 (District of Columbia residents), 24 (poll tax), and 26 (eighteen-year olds). Seven amendments, and a section of the 14th amendment, deal with the structure of government: 11 (judicial power), 12 (electoral college), 14 (counting former slaves in apportionment of House),[88] 16 (income tax), 17 (popular election of Senators), 20 (fixing dates of congressional sessions and presidential inaugurations; presidential succession), 22 (limiting presidential tenure), and 25 (presidential disability and succession).

This history shows that the amendment process has been sparingly used, almost always in order to correct what Madison called "discovered faults"[89] in the original governmental structure or to protect against governmental infringement of fundamental rights. The amendments, like the original Constitution, have carefully avoided endorsing specific programs or imposing restraints upon the government's freedom to act beyond the minimum necessary to protect individual liberty and preserve a federal system.[87]

The only exceptions to this pattern are the 18th and 21st amendments, imposing and then repealing prohibition. The proposed budget amendments are more like the prohibition amendments than any other. Although they do not seek to achieve the same purposes, they are alike in that they do not state fundamental principles to which we firmly and irrevocably commit ourselves as a nation; nor do they correct errors in the constitutional structure of government or safeguard individual rights. Like the prohibition amendment, the proposed budget-balancing amendments reflect much less basic and more transitory concerns which, however popular they may now be, do not, in our view, warrant elevation to permanent constitutional status. The practical and policy issues raised by the amendments are best left to the political arena. The appropriate remedy for dealing with a spendthrift Congress is not a constitutional amendment, but the election of more frugal Congressmen.

Moreover, the proposed drafts are either so broad as to pose the difficult problems of implementation, interpretation and enforcement previously discussed, or so lengthy and full of technical jargon as to be wholly inconsistent

with the rest of the Constitution.[38] Any such amendment is likely to result annually in a host of recurring lawsuits challenging particular federal expenditures or appropriations. Judges, even those on the Supreme Court, are poorly equipped to decide such questions as what the tax rate should be or which government program should be cut in order to balance the budget in the face of congressional or presidential inability or unwillingness to do so. Judicial involvement in such controversies—the only apparent means of enforcing such an amendment—would radically alter the present division of responsibility and power among the three branches of government and inevitably weaken both the courts and the Congress.

The override or exception provisions of the proposed amendments are themselves unique and pose difficult constitutional problems. At present, no provision of the Constitution requires a three-quarters vote of Congress.[39] A constitutional requirement of two-thirds of either house of Congress is rare and applies only to votes affecting the basic separation of powers among the three branches of government: to override presidential vetos (Art. I, Sec. 7), to convict following an impeachment (Art. I, Sec. 3), to expel a congressman or senator (Art. II, Sec. 2), to propose constitutional amendments (Art. V), and to resolve disputes over presidential disability (25th Amend.).[40] In all other matters, a simple majority suffices.

The proposed amendments would effectively undo this principle of majority rule. Under most of the proposals, if the government were already spending to the constitutional limit, war, military or other emergencies of any sort, —indeed, any new government activity needing major additional expenditures—would require a two-thirds or even a three-fourths vote of the Congress. The potential for government chaos or for a tyranny of the minority defeating any controversial or new project would be immense.

In sum, the "blunt weapon"[41] of a constitutional amendment is a wholly inappropriate means of solving the complex, uncertain and ever-changing economic problems which confront our nation. Today's panacea, if elevated to constitutional status, is likely to become tomorrow's problem.

As Alexander Hamilton cautioned nearly two hundred years ago:

> "Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages . . . Nothing, therefore, can be more fallacious than to infer the extent of any power proper to be lodged in the national government from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity."[42]

The Constitution has retained its effectiveness as our national charter because we have generally followed Hamilton's advice. The proposed budget-balancing amendments do just the opposite: they would attempt to limit the illimitable and restrict the federal government's capacity to devise new solutions to as yet unforeseen problems.

For these reasons, the Committee opposes a constitutional amendment as the method of balancing the federal budget or limiting federal spending.

THE COMMITTEE ON FEDERAL LEGISLATION

STEVEN B. ROSENFELD, *Chairman*

MARSHALL BEIL	LAWRENCE M. KAYE
MARK A. BELNICK	ROBERT J. KHEEL
JAMES N. BENEDICT	DANIEL J. KORNSTEIN
DONALD L. BOROD	VICTOR LEWKOW
HOWARD BUSCHMAN	LESLIE LUPERT
HALSEY B. COLLINS	OTTO OBERMAIER
JOHN DOAR	MICHAEL OBERMAN
BLAIR C. FENSTERSTOCK	ROBERT C. SHEEHAN
STEVEN FINELL	JONATHAN SIEGFRIED
CHARLYNN GOINS	ALAN R. SLOATE
THOMAS V. HEYMAN	KAREN WEINER
KATHLEEN IMHOLZ	DENNIS R. YEAGER
CAROLYN ZIEGLER	

May 1979

FOOTNOTES

1 The exact number depends upon who is counting. The National Taxpayers Union, a leading proponent of the constitutional convention approach, claims 30 states, N.Y. Times, Apr. 28, 1979, at 20, col. 1. Thirty-four states must petition Congress in order for a convention to be convened under Article V of the Constitution. For a detailed discussion of the procedural questions raised by a constitutional convention, *see* ABA Special Constitutional Convention Study Committee, *Amendment of the Constitution by the Convention Method Under Article V* (1974) and Committee on Federal Legislation, *Proposed Procedures for Federal Constitutional Conventions (S. 215)*, 27 RECORD of N.Y.C.B.A. 527 (1972).

2 *See, e.g., President Fighting Budget Convention*, N.Y. Times, Mar. 21, 1979, at A1, col. 6; TIME, Feb. 19, 1979, at 18–21; *Congress Seeks Handle on Spending Restraint Issue*, CONG. Q., Feb. 17, 1979, at 267–70.

3 An excellent brief history of state resolutions calling for a constitutional convention can be found in B. Prager and G. Milmoe, "Article V Applications Submitted Since 1789," which appears as Appendix B to ABA Special Constitutional Convention Study Committee, *supra* n.1, at 59–77 (hereinafter cited as *Prager*).

4 *Prager* at 73.

5 *Prager* at 68–69.

6 *Group Wants to Balance Nation's Checkbook*, CONG. Q., Feb. 17, 1979, at 277–79.

7 TIME, Feb. 19, 1979, at 18, 21. Some fifty proposals are described (and criticized) in Memorandum from J. Scheu and L. Shuster to Sen. Muskie, Mar. 1, 1979, which is printed at 125 CONG. REC. S2443–45 (daily ed. Mar. 8, 1979).

8 The proposals are cited by their numbers in the current session of Congress (96th Cong., 1st Sess.).

9 By contrast, a declaration of war under Article I, Section 8 of the Constitution requires only a simple majority of Congress.

10 The amendment provides two ways to secure the concurrence of the President: the recommendation by the President in a "special message to Congress" of a "con-

current resolution" declaring a national emergency, or the passage by Congress of a "joint resolution" which requires Presidential approval.

11 S.J. Res. 58 is a revised version of a proposal developed by the National Tax Limitation Committee, of which Dr. Friedman is a principal member. The full text of the original proposal is printed at 125 Cong. Rec. S975 (Feb. 1, 1979). *See, A Tax Group Urges Amendment Linking Spending to GNP Gain*, N.Y. Times, Jan. 31, 1979 at A12, col. 2–3.

12 Under the original Friedman proposal, *supra* n. 11, three-fourths of Congress could not change the total spending limitation (which, in effect, is to amend section 1 of the amendment) without approval of a majority of state legislatures. The original proposal also contained a provision to govern judicial enforcement. Its section 7 would have limited standing to members of Congress suing in the District of Columbia federal district court. The only permissible defendant would have been the Treasurer of the United States who would be given authority over all government spending if necessary to enforce a court order. The court, however, could "not specify the particular outlays to be made or reduced." Compliance with any court order had to occur within three fiscal years. 125 Cong. Rec. S975 (daily ed. Feb. 1, 1979).

13 The Committee expresses no opinion on the *economic* arguments for or against the proposed amendments; they are included herein in order to present a complete picture. The economic arguments in favor of a constitutional amendment are summarized in an August 1978 Report of Committee to Investigate a Balanced Federal Budget of the Democratic Research Organization (DRO) which is printed at 124 Cong. Rec. H8802–10 (daily ed. Aug. 16, 1978) (hereinafter cited as *DRO Report*).

14 *DRO Report* at H8807–08; N. Jacoby, *Why the Federal Constitution Should Require a Balanced Budget* (undated paper available from the National Taxpayers Union).

15 *DRO Report* at H8805.

16 125 Cong. Rec. S975 (daily ed. Feb. 1, 1979) (remarks of Sen. Heinz).

17 For a description of the effects of a spending limitation amendment on the size of the federal budget, *see* 125 Cong. Rec. S4037–40 (daily ed. Apr. 5, 1979) (remarks of Sen. Heinz and Stone). *See also* Wicker, *Brown v. Budget*, N.Y. Times, Apr. 10, 1979, at A19, col. 5–6.

18 Davidson, *Requiring a Balanced Budget*, Wash. Post, Mar. 6, 1979 at A19, col. 1–3; N. Jacoby, *supra* n.13.

19 *Budget Receipts and Outlays, 1957–80*, Cong. Q., Feb. 17, 1979 at 272; Roberts, *Congress and the Budget*, N.Y. Times, Apr. 26, 1979, at B10, col. 1–2; *Senate Defeats Attempt To Balance U.S. Budget*, N.Y. Times, Apr. 25, 1979, at A24, col. 1.

20 The economic arguments against a constitutional amendment are summarized in a Congressional Research Service report, *Constitutional Limitations on the Budget*, which appears at 125 Cong. Rec. S2445–51 (daily ed. Mar. 8, 1979) (hereinafter cited as *CRS Report*). *See also* Silk, *A Budget Amendment Could Be the Wrong Easy Answer*, N.Y. Times, Mar. 11, 1979, § 4, p. 4, col. 1–3; Anderson, *The Budget and the Constitution: The Historical Experience*, Wash. Post, Feb. 12, 1979, at A19, col. 1–4.

21 Joint Economic Committee, *Studies in Fiscal Policy: The Economic Impact of Alternative Fiscal Policies*, 94th Cong., 2d Sess. at 18 (Comm. Print 1976).

22 *CRS Report* at S2447–48.

23 *CRS Report* at 2449; Surrey, *Federal Income Tax Reform, The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance*, 84 Harv. L. Rev. 352 (1970).

24 *CRS Report* at S2448.

[26] Editorial, *The Balanced Budget Boomerang*, N.Y. Times, Feb. 27, 1979 at A18, col. 1–3; *States' Push for Balanced Budget Presents Dilemma for Congress*, N.Y. Times, Jan. 29, 1979 at A15, col. 2–3. As much as 75% of federal expenditures are "uncontrollable under existing law," that is, they are required by prior legislative or executive action to pay for entitlement programs (*e.g.*, social security, unemployment insurance, welfare), certain defense allocations, debt service and other items. *CRS Report* at S2446, S2449–50. These expenditures make discretionary social service programs and federal assistance to states and local governments particularly attractive targets.

[27] Address of Sen. Edmund S. Muskie to National Press Club (Washington, D.C.), Feb. 13, 1979; 125 Cong. Rec. S1092 (daily ed. Feb. 5, 1979) (remarks of Sen. R. Byrd).

[28] *CRS Report* at S2450; 125 Cong. Rec. S1092 (daily ed. Feb. 5, 1979) (remarks of Sen. R. Byrd); Silk, *A Budget Amendment Could Be the Wrong Easy Answer*, N.Y. Times, Mar. 11, 1979 §4, at 4, col. 1–3.

[29] *CRS Report* at S2447; Memorandum from J. Schen and L. Shuster to Sen. Muskie, Mar. 1, 1979 printed at 125 Cong. Rec. S2449–45 (daily ed. Mar. 8, 1979).

[30] The original Friedman proposal would attempt to avoid such confrontations by limiting standing only to members of Congress suing in Washington and by limiting the courts' authority to decide how to reduce expenditures. 125 Cong. Rec. S975 (daily ed. Feb. 1, 1979). *See* n. 12, *supra*.

[31] Memorandum from Prof. L. Tribe to T. Kraft (Assistant to the Pres.), Jan. 17, 1979 at 3–5 (hereinafter cited as *Tribe Memorandum*).

[32] *Tribe Memorandum* at 6.

[33] Congressional Budget Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974); Weaver, *Congress and Its Fiscal Role*, N.Y. Times, Apr. 14, 1979, at 7, col. 3–4.

[34] Indeed, a statute enacted last year (Pub. L. No. 95-435, 92 Stat. 1053, § 7, 31 U.S.C. § 27) provides that "[b]eginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts." *See Senate Panel Votes Plan to Balance Budget in 1981*, N.Y. Times, Apr. 11, 1979, at A17, col. 1–3; *Budget Battle Opens in House Committee*, N.Y. Times, Apr. 3, 1979, at D2, col. 3–6; *CRS Report* at S2447.

[35] *Lochner* v. *New York*, 198 U.S. 45, 75 (1905) (dissenting opinion).

[36] Two other sections of the Fourteenth Amendment treat specific problems created by the aftermath of the Civil War. Section 3 disqualifies former Confederate officials from public office, and section 4 affirms the validity of the Union's War debt and invalidates the Confederacy's debt. In addition to this reference in section 4 of the 14th Amendment, the public debt is mentioned only two other times in the Constitution: Art. I, Sec. 8 ("The Congress shall have Power . . . to pay the Debts . . . of the United States") and Art. VI ("All Debts contracted and Engagements entered into" prior to the adoption of the Constitution shall be valid).

[37] *The Federalist No. 43* (J. Madison) at 278 (Mentor Books ed. 1961).

[38] *Cf.*, *Reasons for the Repeal of the Eighteenth Amendment*, Address of Joseph H. Choate, Jr. before the N.Y. Civic Forum, Jan. 17, 1930:

> "Our Constitution is a frame of government. It creates Legislative, Executive and Judicial authorities, and distributes powers among them. Its fundamental and unchangeable theory is that it creates a government of delegated power only, and is based on the representative system. As concerns legislation—rules of conduct—it comprises certain definite and limited grants of power to Congress to enact such rules, but does not—except for Prohibition—prescribe any rule whatever."

[39] *Tribe Memorandum* at 3–4. Rovere, *Affairs of State*, The New Yorker, Mar.

19, 1979, at 136, 138 (An amendment full of definitions "would come close to introducing algebraic formulas into a document that can at present be read at a sitting and understood . . . by any reasonably literate citizen. In contrast to it, the Constitution of the State of New York is so long and has been so often amended that it is difficult even for purists to recall what is in it and what is not.")

39 The only use of a three-fourths vote in the Constitution is the number of states necessary to ratify an amendment to the Constitution pursuant to Article V.

40 In addition, section 3 of the Fourteenth Amendment provided that a two-thirds vote of Congress was necessary to grant exemptions from the prohibition against holding public office imposed upon former Confederate officials.

41 Editorial, *The New, New Federalism*, Wall St. J., Jan. 10, 1979 at 22, col. 1.

42 *The Federalist No. 34* (A. Hamilton) at 207 (Mentor books ed. 1961).

FEDERAL RESERVE SYSTEM,
BOARD OF GOVERNORS,
Washington, D.C., February 29, 1980.

HON. BIRCH BAYH,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN BAYH: I am pleased to reply to your recent letter in which you asked the Federal Reserve to study the fiscal and budgetary impact of S.J. Res. 126, a proposed Constitutional amendment for a balanced budget. Let me begin by emphasizing my agreement that there is a need to achieve better discipline over the budget process. A budget surplus has been realized only once in the past two decades, and federal outlays as a percentage of GNP have increased from 18.5 percent in 1960 to a projected 22.4 percent in 1980. It is my belief that, if we are to bring about an end to inflation and create an environment in which private enterprise can thrive, the growth of federal outlays must be slowed and brought into better balance with revenues in the years ahead.

As described in your letter, S.J. Res. 126 would provide for greater fiscal discipline by imposing two restrictions on the budget-making process: (1) budgeted expenditures would not be permitted to exceed receipts unless this provision were overridden by a three-fifths vote of the Congress; and (2) the ratio of receipts to national income would not be permitted to exceed the ratio recorded in the immediately preceding year, unless the Congress were to enact a law overriding this restriction. Your letter requested an analysis of the amendment under assumptions that: (1) the Congress does not override either restriction; and (2) the Congress abides by the balanced budget restrictions but not necessarily by the restriction on growth of receipts.

A review of the experience of recent years suggests that the restrictions in the amendment could have a substantial effect on the course of budgetary policy. As can be seen in the enclosed table, the ratio of receipts to national income has tended to creep upward during the past two decades. The average ratio in the 1960's was considerably below that in the 1970's, and the figure for 1979 was exceeded only once—in 1969 when revenues were boosted by an income tax surcharge to help finance Vietnam-related expenditures during a period of very robust aggregate demand. A receipts restriction likely would have required significant tax cuts in the past few years as revenues were raised by the interaction of inflation and the progressive tax structure.

The table also indicates that outlays as a percent of national income have trended upward. The spending ratio jumped in 1975 when the economy was in recession and fiscal policy was aimed at promoting recovery. Nonetheless, the ratio failed to return to earlier levels in the latter years of the 1970's—even during the Vietnam War period. The restrictions imposed by the proposed Constitutional amendment probably would have led to lower spending in this recent period, contributing thereby to restraint of inflationary forces.

While it appears fairly clear that the two restrictions would have proven beneficial during the past few years, they might at times have hindered efforts by the Congress to counter instability in the economy through the use of fiscal policy. For example, the tax cuts and expenditure increases that were enacted to counter the recession in 1975 would have been ruled out. They also would have prevented the passage of the surtax that was used to curb inflationary demand in 1969.

Adherence to the two restrictions would also tend to blunt the automatic stabilising influence that the budget currently exerts on economic activity. Because of the progressive nature of our income tax system, tax revenues tend to rise faster than national income, a process that tends automatically to curb inflation-induced increases in nominal income. The restriction on receipts, of course, would require the Congress to cut tax rates in such situations, in order to hold the ratio of tax receipts to national income to the ratio established in the preceding year. Under the proposed amendment, a personal tax cut of about $11 billion would be required in 1980 to hold the ratio of income tax liability to national income at the same level as it was in 1979. In my view, a tax cut of this magnitude would tend to exacerbate our inflationary problems.

The automatic tendency of the budget to reduce the severity of a recession would also be seriously curtailed by the restrictions. When nominal income declines federal receipts drop even more rapidly (again because of the progressive federal tax structure), In response to such a development, adherence to the balanced budget restriction would require the Congress to legislate a similar cutback in

expenditures, and this would reinforce the contractionary pressures in the economy. The Congress could, of course, minimize the required decline in outlays by raising tax rates enough to offset the effects of income tax progressivity, but this too would add to contractionary pressures.

Because expenditures in a number of programs, such as unemployment compensation, tend to rise automatically in a recession, the proposed budget restrictions would place a great deal of pressure on the more controllable budget categories—such as defense procurement—during economic downturns. The deficit and revenue restrictions could as a consequence tend to distort priorities within the budget and perhaps create "start-stop" inefficiencies in the more controllable programs.

In addition, taking the automatic stabilizing influences out of the budget would naturally place a greater burden on discretionary policy, which, as I noted above, would also become more tightly restrained on the fiscal side. The result would be to create pressures for greater reliance on the use of monetary policy for stabilization purposes. Such a one-sided approach to stabilization policy may not be desirable. It might in some circumstances lead to greater volatility in credit market conditions and could make it more difficult to deal simultaneously with domestic and international economic problems.

I would note one major area of ambiguity in the proposed amendment. The Congress, in attempting to set balanced receipt and outlay totals, would have to base its deliberations on a very preliminary estimate of national income for the preceding year and on a projection for the coming year, both of which are subject to substantial error and frequent revision. It is not clear from the proposed amendment whether the Congress would be required to revise its budget in cases where the economy's performance did not correspond with the forecast used in preparing the budget. Such important matters should, I would think, be clarified before the amendment is passed on.

Over the longer run, I am concerned that Congress would be tempted to circumvent the restrictions by placing more activities off budget and by creating more federal loan guarantee and tax expenditure programs. Certainly, such a development would be undesirable and would seriously undermine the entire budget process.

Your letter also requests a discussion of the amendment under the assumption that Congress abides by the restriction against deficits but not by the restriction on the receipts. In this instance, the progressive nature of the tax structure would permit receipts to grow faster than national income, and thus the budget would tend to retain some of its automatic stabilization characteristics during inflationary periods. Some restraint on expenditure growth would still be provided by the three-fifths vote required to approve a deficit.

To summarize, the restrictions on budget policy contained in S.J. Res. 126 could well exert a considerable influence on budgetary policy and would represent a source of fiscal discipline. However, certain potential problems must be considered. In periods of economic instability, the restrictions, if strictly adhered to, would impose rigidities on the budgetary process that would diminish the budget's potential for acting as a stabilizing influence on the economy. The proposal also could lead to distortions and inefficiencies in achieving budget priorities, would place greater emphasis on monetary policy as a stabilization policy device, and would encourage a diversion of federal activities into off-budget programs.

Having expressed these concerns about the proposal under the assumptions that one or both of its restrictions are not overridden, let me go on to say that in my view this proposal is preferable to some others, specifically because it does leave the Congress with some flexibility to adjust to changing circumstances. Once this flexibility is taken into account, it can be seen that at the core of the proposal are requirements for a three-fifths vote on Congress to authorize a budget in deficit (rather than the current simple majority) and for the Congress to take special and explicit note when it approves a budget in which receipts (and perhaps outlays) are expected to rise faster than national income. Both of these aspects of the proposed amendment deserve careful consideration.

If the Congress does finally conclude that additional restrictions on the budget process such as those outlined in this proposal are desirable, I would suggest that they be first tried out by incorporating them in the Congressional budget process. A simple step in this direction under the present budget process might be to require that any concurrent budget resolution involving a budget deficit require a three-fifths majority vote. An explicit vote on target ratios of receipts and expenditures to GNP or national income also could be easily incorporated into current budget

procedures. In this way, unforeseen problems could be identified before the more profound and less easily reversed step of amending the Constitution is taken.

The achievement and maintenance of discipline over federal spending is an absolute necessity if inflation is to be brought under control. I would hope that unduly rigid—and perhaps unsustainable—rules can be avoided. However, our recent history does increasingly suggest the wisdom of exploring means for introducing greater discipline into the budgetary process.

Sincerely,

PAUL A. VOLCKER.

Enclosure.

RELATIONSHIP OF FEDERAL RECEIPTS AND OUTLAYS TO NATIONAL INCOME

[As a percentage of national income]

Fiscal year	Receipts	Outlays	Budget surplus or deficit (−)
1960	22.8	22.7	0.07
1961	22.9	23.7	−.82
1962	22.5	23.1	−1.60
1963	22.7	23.7	−1.02
1964	22.5	23.7	−1.18
1965	21.6	21.9	−.30
1966	22.0	22.6	−.64
1967	23.4	24.8	−1.36
1968	22.5	26.2	−3.69
1969	25.3	24.8	.43
1970	24.7	25.0	−.34
1971	22.9	25.7	−2.79
1972	23.2	25.8	−2.60
1973	23.0	24.5	−1.47
1974	24.0	24.4	−.43
1975	24.2	26.0	−1.80
1976	23.2	26.3	−3.11
1977	24.2	27.2	−3.04
1978	24.1	27.0	−2.93
1979	24.8	27.62	−2.87
Average rates:			
1960–64	22.7	23.4	−.80
1965–69	23.0	24.1	−1.10
1970–74	23.6	25.1	−1.53
1975–79	24.1	27.3	−3.29

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS,
Washington, D.C. March 7, 1980.

Hon. BIRCH BAYH,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of January 8, 1980, the Department of Justice strongly opposes the constitutional amendment proposed by S.J. Res. 126. As Secretary Miller and Director McIntyre have recently pointed out to you, this Administration believes that the constitutional amendment proposed in S.J. Res. 126 would be extremely unwise with respect to both budgetary policy and economic policy. We would, in addition, like to bring to your attention some of the legal problems that such an amendment might raise.

In the first place, section 1 forbids Congress to pass or the President to sign an appropriation bill which would cause the total expenditures for any year to exceed the expenditures of that year's budget. It is unclear how this section would operate. If the Congress did pass and the President did sign such a bill, could a court order that the money not be spent? More likely, could a court determine, contrary to Congress and the President, that the limit on budget expenditures had been exceeded given the complex nature of the appropriation process? A constitutional crisis, as well as considerable administrative confusion, would be precipitated if, for example, the President ordered the Executive branch to spend money specifically appropriated under such a bill, and the money was in fact spent before suit was filed. See *State of Louisiana* v. *Brinegar*, 388 F. Supp. 1319 (D. D.C. 1975); *Bakalis* v. *Weinberger*, 368 F. Supp. 721 (N.D. Ill. 1973); *National Counsel of Community Mental Health Centers, Inc.* v. *Weinberger*, 361 F. Supp. 987 (D. D.C. 1973); Compare *United States* v. *Louisville*, 169 U.S. 249,

254 (1898), with *Weeks* v. *United States*, 406 F. Supp. 1309, 1328 (W.D. Ok. 1975), *reversed on other grounds*, 430 U.S. 73 (1976).[1]

The same problem is evident in section 2. It would be difficult for a court to frame a remedy if federal receipts did exceed, even fractionally, the proportion collected the previous year. This could entail a massive factual determination and depending on how many suits were filed, one that might have to be repeated in numerous courts. Moreover, we are uncertain upon what basis a court might order the Treasury Department to refund money that had been legally collected. Without specific congressional authorization, officers of the United States may not dispose of United States property by, for example, remission of taxes. U.S. Const. Art. IV, § 3, cl. 2. See *Royal Indemnity Co.* v. *United States*, 313 U.S. 289, 294–45 (1941). And even if such authority were granted, it is unclear which parties would have claims for such refunds.

Additionally, section 2 refers to "receipts. . . ." This language does not state the percentage that would be permissible during the *first* year that the amendment is effective—a year when the prior year's receipts would *not* have been collected in accordance with section 2. Interpretation of this section during the first year would be prone to confusion and error. Other sections of the Constitution have been written to avoid such transitional problems. Compare U.S. Const. Art. 1, § 3, cl. 2; amend. XVII, § 3; amend. XXII, § 1.

On a practical level, it is unclear how the requirement that a majority plus one of each house agree with each other on a balanced budget could be implemented. If no agreement is reached on any balanced budget (or if there are insufficient votes to achieve the three-fifths required for an unbalanced budget), section 1 will be violated but it is by no means apparent who is responsible for the violation or how the violation can be cured. It is unclear whether the positive injunction that a budget be adopted compels individual congressmen to vote for a budget they oppose and, if so, by whom and how it is determined which congressman must accede to which budget. Indeed, the provision may not be judicially enforceable at all, as courts cannot judicially establish budgets where Congress cannot agree.

Next, the amendment does not adequately define what is meant by "a budget," for example, whether it must be a single, omnibus bill, perhaps as amended, or whether it can be construed as an amalgam of whatever appropriations and revenue bills pass. If it can be an amalgam, and if total expenditures exceed revenues, the further question arises as to whether all the constituent bills must pass by a three-fifths vote, just the appropriations bills, or just some of the appropriations bills. Another potential question is, regardless of what a "budget" means, whether Congress can pass any appropriations acts at all before the budget. On the one hand, it could be said that such acts might be thought constitutional since, when the budget has not been established, individual appropriations acts cannot be said to cause expeditures to be over budget. An alternative interpretation might hold those appropriation acts unconstitutional, since they cannot be said *not* to cause expenditures to go over budget. Most probably such laws are in constitutional limbo until a budget is passed, which suggests that, as a practical matter, appropriation bills cannot be passed before a budget is adopted. This requirement could placed considerable strain in the appropriation process.

Another problem with section 1 is to determine which bill "causes" expenditures to exceed the budget. An example may help to illustrate the complexities of interpreting this provision, and the uncertainty it would introduce into the budgetary process. Assume, for example, that the budget is $9 billion, and bills A, B, C, D, and E each appropriate $2 million. Bills A and B have become law prior to Day 1. On Day 1, both houses pass bill C. On Day 2, both houses pass bill D. On Day 3, bill E is passed by both houses, supported exclusively by congressmen who opposed either bill C or bill D and argue that the President should veto the bill they opposed. On Day 4, the President vetoes bill E. On Day 5, the President signs bill D. On Day 6, Congress overrides the veto of bill E, which becomes law. On Day 12, bill C, having been neither signed nor vetoed within 10 days, becomes law. The amendment leaves unclear which, if any, of these laws is unconstitutional and who, if anyone, has violated the amendment by which action. At any given stage in the process, the constitutionality of a given bill may be thought to turn on the out-

[1] A second ambiguity in section 1 involves the initial implementation of the amendment and the expression in the first sentence "for each year." It might be appropriate to assume that in an amendment concerning budgets these words refer to each fiscal year, but section 5 states that the amendment will "take effect" on the first day of some calendar year. The considerable problems raised by the amendment would not, to say the least, be eased in a transitional fiscal year to which it only partially applied.

It is also conceivable that the language "the Congress shall adopt" could be seen as displacing, with respect to budget bills, the provisions of art. 1, sect. 7 providing for presidential veto, particularly in comparison with section 2 in which it is clearly contemplated that congressional action would be subject to veto. On the other hand, there is no clear intent to take the surprising step of overriding article 1 in this regard.

come of subsequent action on any number of different bills and on the sometimes unpredictable happenstance of which bills become law first. In easily imaginable circumstances, the President could arguably determine the constitutionality of major bills by varying the order in which they are signed. A second anomaly illustrated by this example is that, while the amendment forbids the President to sign certain bills, it does not appear to forbid him to allow bills to become law without his signature. While this difficulty could be "corrected" by drafting the provision to require a veto in cases where the amendment currently forbids signing, a constitutional command that the President veto certain bills is both unprecedented and undesirable. For example, if a public works bill reached the President's desk prior to his receipt of an essential defense spending bill, the President could be obligated by such a command to veto the latter.

An alternative to the first-in-first-out system for determining which bill causes an over-budget expense might be that a bill "causes" expenditures to go over budget if it appropriates for any activity an amount in excess of the amount set forth for that activity in the budget. But this alternative is flatly inconsistent with the plain language of the amendment. Section 1 requires only a budget setting forth "the total receipts and expenditures of the United States," not one setting forth expenditures by category.

Section 3, which would permit Congress to waive the balanced budget requirement "with respect to any single year in which a declaration of war is in effect," is unclear in several respects. First, as with budgetary adoption under section 1, it is open to question whether any congressional waivers are subject to presidential veto. See footnote, pp. 1–2. Second, the reasonable intent of the section seems to be that if a major war lasts three years, a waiver can be passed in all three years. The literal language, however, is susceptible of several constructions, including one that would allow only one year's waiver per declaration of war.

Section 4, requiring that terms be construed in accordance with their meaning on the date the amendment is submitted for ratification, may raise questions at later dates that cannot now be foreseen. Such a provision could freeze archaic definitions into the interpretation of the Constitution.

The most fundamental problem with the amendment may lie with the very process of adopting a budget. If the legality of a budget turns on what "total receipts and expenditures" are *in fact* obtained during the year, then the constitutionality of a budget and of any spending could not be judged except after the fact. If on the other hand, a budget can be made on the basis of projected receipts and expenditures, then different, but still difficult, problems arise. First, there have been many disputes at all levels of government concerning what items are properly included as receipts and expenditures. Thus substantial constitutional issues will be posed by the choice of accounting principles engendering substantial litigation over the "proper" accounting method.

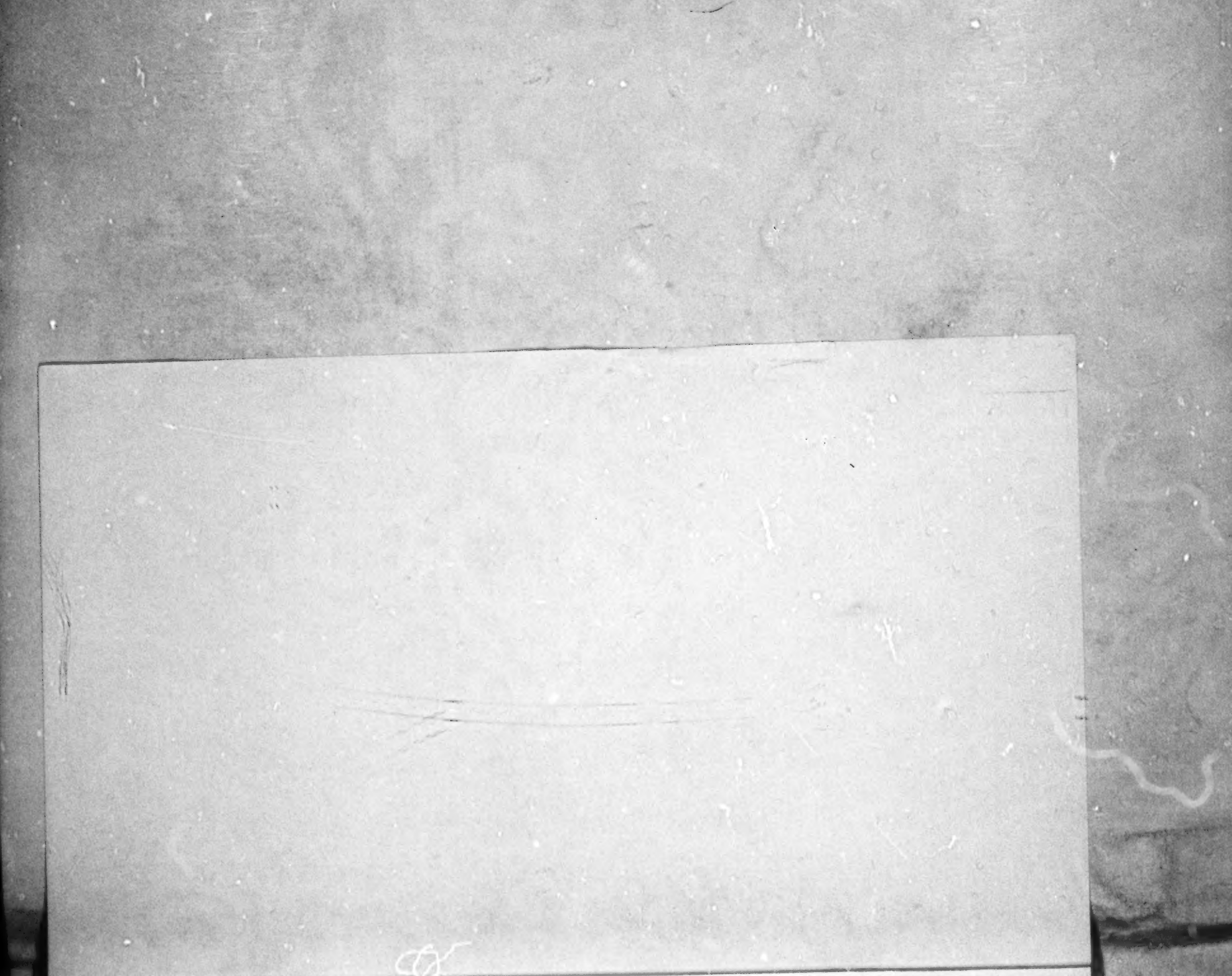
An even more troublesome problem is that any projections will necessarily rely on predictions of economic and demographic data. If the amendment were in effect today and Congress passed a budget that assumed a 12 percent inflation rate and 6 percent unemployment rate by the end of the year (or 7 percent inflation and 3 percent unemployment), the amendment leaves unstated whether the budget could be attacked on constitutional grounds as being based on "unrealistic assumptions." This problem too will create substantial uncertainty in the appropriation process and may give rise to extensive litigation.

Other difficult, and uncertain questions raised by the amendment concern the extent, if any, to which the terms of the amendment would be judicially enforceable. With respect to each of the ambiguities noted above with respect to the substance of the amendment, it would be, at best, an open question whether taxpayers would have standing to sue, and whether the cases would be otherwise justiciable. If taxpayers are found to have standing under *Flast* v. *Cohen*, 392 U.S. 83, 102–103 (1976), the myriad of problems highlighted above would embroil both the budget as a whole, and specific appropriations in complex litigation, which could conceivably paralyze the operations of the federal government and the workings of the legislative process. And if so interpreted, the amendment's impact on the workload of the federal courts could be overwhelming.

For all of these reasons, the Department of Justice strongly opposes the constitutional amendment proposed by S.J. Res. 126.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

O